

# Exhibit F

1  
2 UNITED STATES BANKRUPTCY COURT  
3 SOUTHERN DISTRICT OF NEW YORK

4 -----x

5 In Re:

6 Chapter 11

7 LEHMAN BROTHERS Case No. 08-13555(JMP)  
8 HOLDINGS, INC., et al, (Jointly Administered)  
9 Debtors.

10 -----x

11  
12 \* \* \*HIGHLY CONFIDENTIAL\* \* \*

13 DEPOSITION OF STEPHEN KING

14 New York, New York

15 September 10, 2009

16  
17 Reported by:

18 MARY F. BOWMAN, RPR, CRR

19 JOB NO. 24299  
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| Page 6                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Page 7                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
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| <p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 STEPHEN KING,</p> <p>3 called as a witness by the parties,</p> <p>4 having been duly sworn, testified as</p> <p>5 follows:</p> <p>6 EXAMINATION BY</p> <p>7 MR. HINE:</p> <p>8 Q. Good morning, Mr. King.</p> <p>9 A. Good morning.</p> <p>10 Q. We met briefly off the record. My</p> <p>11 name is Bill Hine. I am from Jones Day, which is</p> <p>12 the law firm representing, or acting as special</p> <p>13 counsel for Lehman Brothers Holdings, Inc. in</p> <p>14 connection with the bankruptcy proceeding that's</p> <p>15 ongoing, and this deposition is related to that</p> <p>16 proceeding.</p> <p>17 Have you ever been deposed before?</p> <p>18 A. No.</p> <p>19 MR. STERN: Can we just introduce the</p> <p>20 other people in the room.</p> <p>21 MR. HINE: Sure. Myself from Jones</p> <p>22 Day, and my associate is George Spencer, who</p> <p>23 will be joining us shortly.</p> <p>24 Do you want to go around the table?</p> <p>25 MR. OXFORD: Neil Oxford with the law</p>                                                                                                                                                | <p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 firm of Hughes Hubbard &amp; Reed. We represent</p> <p>3 the SIPA trustee, and my colleague is Fara</p> <p>4 Tabatabai.</p> <p>5 MR. DAKIS: I'm Robert Dakis. I'm</p> <p>6 from the law firm of Quinn, Emanuel,</p> <p>7 Urquhart, Oliver &amp; Hedges, and we represent</p> <p>8 the official committee of unsecured</p> <p>9 creditors.</p> <p>10 MR. LAYDEN: David Layden from Jenner</p> <p>11 &amp; Block.</p> <p>12 MR. HINE: This is Ingrid Christian,</p> <p>13 who has lost her voice, from Alvarez &amp;</p> <p>14 Marsal, so I will do the honors of</p> <p>15 introducing her.</p> <p>16 BY MR. HINE:</p> <p>17 Q. Mr. King, as I'm sure your counsel has</p> <p>18 explained, I am going to ask you a series of</p> <p>19 questions. You are going to provide the answers</p> <p>20 as best you can.</p> <p>21 I did want to alert you to one</p> <p>22 procedural rule we have here. From time to time</p> <p>23 during the deposition, your lawyer will</p> <p>24 undoubtedly state an objection or make some kind</p> <p>25 of statement on the record as to the form of my</p>                                                                          |
| Page 8                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Page 9                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 question.</p> <p>3 MR. STERN: Very unlikely.</p> <p>4 Q. I just want to let you know that does</p> <p>5 not relieve you of the obligation to answer the</p> <p>6 question. It is just Jack being Jack. It is Jack</p> <p>7 doing his job, stating objections to the form of</p> <p>8 the question.</p> <p>9 In that regard, I will undoubtedly ask</p> <p>10 a confusing question or a question that misuses a</p> <p>11 term that you folks in your profession use all the</p> <p>12 time. I feel like I am learning a new language</p> <p>13 here in some sense. So please correct me if I</p> <p>14 make a mistake with the term or abbreviation or</p> <p>15 some kind of concept, because I really do want to</p> <p>16 ask a clear question so you can then give me a</p> <p>17 clear answer. OK?</p> <p>18 A. Um-hm.</p> <p>19 Q. And if at any time you need a break,</p> <p>20 let me know. This is not an endurance test, so</p> <p>21 just let me know if you need a break.</p> <p>22 A. Sure.</p> <p>23 Q. Can we start with your title at</p> <p>24 Barclays? What is your title?</p> <p>25 A. I am managing director and head of a</p> | <p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 group called PMTG.</p> <p>3 Q. And PMTG stands for what?</p> <p>4 A. Portfolio mortgage trading group.</p> <p>5 Principal mortgage trading group. I forgot what</p> <p>6 the P was. It has been so long since we named it.</p> <p>7 Q. How long have you held that title?</p> <p>8 A. MD I have had for three, four years, I</p> <p>9 think, and the PMTG group was formed in late 2007.</p> <p>10 Q. Could you describe for me briefly your</p> <p>11 duties in this position?</p> <p>12 A. I run the group. It is ostensibly a</p> <p>13 trading and risk management group. It is -- once</p> <p>14 upon a time its primary asset was mortgages and</p> <p>15 mortgage-related securities and derivatives</p> <p>16 thereon.</p> <p>17 We manage a portfolio of assets which</p> <p>18 the bank owned that were mortgage assets, and we</p> <p>19 also have a proprietary trading activity.</p> <p>20 Q. Who do you report to directly?</p> <p>21 A. I report to Eric Bommensath.</p> <p>22 Q. And do you know his title?</p> <p>23 A. He is global head of -- global head of</p> <p>24 fixed income, I think, and there are some other</p> <p>25 bits to it, too.</p> |

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Q. And who reports directly to you?

A. Do I need to list all of them?

Q. No. I'm just interested in the principal folks that report to you directly.

A. The team is -- well, the team is slightly different today than it was a few months ago. It is about 30 or so people. They are -- the senior folks are -- a number of them are senior traders who trade a range of securities. I can give you their names if you like, if it is relevant, for those traders, and then there are also operations and risk management personnel as well.

Q. Could you give me the heads of the -- let me just ask it this way: Is your group broken into separate divisions or --

A. Separate not divisions but functions. It is one trading operation, but within that, we have different products, different risks. Therefore, the group is organized along those risks. But it is really -- in the terminology of a bank, it is one desk.

Q. OK. Does Mr. Yang report directly to you?

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A. Yes, yes. Jasen reports directly to me.

Q. Is it fair to say that you held this same position during the week of September 15, 2008?

A. Yes.

Q. And --

MR. STERN: I am just going to put out the blank September 2008 calendar, just in case Mr. King needs to reference it.

MR. HINE: That's a good idea.

A. It is fair to say that this group came into existence or was derived from another group which I ran in 2007 in a response to the crisis in credit markets and mortgage-related assets. So therefore, the group's character has changed in response to those conditions over the two years, or three years. I guess it is going on towards three years now.

One of those things that prompted change was the bankruptcy or seizure of Lehman itself. So we expanded the group in response to the need to manage the substantial portfolio of risks and assets which the bank had taken on as a

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result of that acquisition. So there is a slight change in character immediately prior to and immediately following the purchase.

Q. When you say that acquisition, you are meaning the acquisition of Lehman assets?

A. The Lehman assets, yes.

Q. As you can probably expect, most of this deposition is going to center around the week of September 15.

A. Right.

Q. Could you give me just a general description of your role in connection with the Lehman acquisition during that week?

A. Yes. My -- we are a -- I forgot P is principal and not portfolio. We are a principal risk taking or risk managing unit, so -- and essentially we were -- we manage or managed illiquid risks, particularly difficult to trade risks, particularly things like mortgages, mortgage-backed securities.

So during this week and in the lead up to the week, our job was -- my job was to facilitate in gathering estimates as best as possible in a very short period of time for the --

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for useful marks or valuations or prices for various securities that were part of the various different proposed purchase -- asset purchases, and then the on boarding of this risk and then the risk management of that risk. That was our function.

Q. When you say illiquid risks or illiquid assets, is there a separate unit within Barclays that performs your function with respect to more liquid assets?

A. No. A -- I mean I guess the answer probably is yes, at some point. It may be it would be Treasury or it would be something else in the bank. For the most part, banks don't hold large amounts of liquid risks, that trading functions -- the reason this group was formed was to deal with the fact that these are incredibly difficult assets to dispose of.

Q. I understand.

A. And they trade, many of them trade by appointment, meaning there is no exchange or obvious market that you can easily trade the assets.

So we all, we do use liquid

| Page 14                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Page 15                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
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| <p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 instruments and liquid assets in the risk</p> <p>3 management of these illiquid assets, so we trade</p> <p>4 everything. But that's really the reason for the</p> <p>5 existence of the business.</p> <p>6 Q. I understand.</p> <p>7 Before we get into the week of</p> <p>8 September 15, is your group separate and distinct</p> <p>9 from something I see referred to as PCG?</p> <p>10 A. PCG is a control function. So</p> <p>11 that's -- we are a trading group as opposed to</p> <p>12 a -- so we work, I work for Eric Bommensath, who</p> <p>13 works for Jerry in the business, if you like, as</p> <p>14 opposed to product control, which is a control</p> <p>15 function which reports up ultimately into Patrick.</p> <p>16 Q. Patrick Clackson?</p> <p>17 A. Yes.</p> <p>18 Q. So just I'm trying to picture the</p> <p>19 structure of Barclays. The PCG group reports</p> <p>20 under his reporting line, not yours, correct?</p> <p>21 A. PCG is a firm-wide function. It is</p> <p>22 product control group, so it is a control</p> <p>23 function. It deals with -- our interaction on a</p> <p>24 daily basis with product control is to insure that</p> <p>25 we have mandates to trade, that we are marking our</p>                            | <p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 books appropriately, that we are reporting</p> <p>3 appropriately, and that all of the things that we</p> <p>4 have to do on a normal basis are administered in</p> <p>5 such a way that they can roll up into the firm's</p> <p>6 books and records, et cetera, appropriately.</p> <p>7 Q. Can we talk specifically about the</p> <p>8 week of September 15, and just to set some</p> <p>9 parameters in case you are as bad with dates as I</p> <p>10 am, September 15 is the date that Lehman Brothers</p> <p>11 Holdings declared bankruptcy.</p> <p>12 Can I ask you this question first.</p> <p>13 You are aware there was some discussions between</p> <p>14 Barclays and Lehman prior to that filing of</p> <p>15 bankruptcy?</p> <p>16 A. Yes, yes.</p> <p>17 Q. Did you have any involvement in those</p> <p>18 discussions?</p> <p>19 A. Yes.</p> <p>20 Q. Could you describe for me generally --</p> <p>21 and again we are talking about the weekend of,</p> <p>22 say, the 12th, 13th and 14th of September, right?</p> <p>23 A. Yes.</p> <p>24 Q. Could you just describe for me</p> <p>25 generally your role in those sessions?</p>                                                                                                                                      |
| Page 16                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Page 17                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 A. The same.</p> <p>3 Q. Meaning --</p> <p>4 A. That we were provided a list of</p> <p>5 securities and assets that were -- at least what</p> <p>6 we understood were owned or held by -- the 14th is</p> <p>7 prior to the bankruptcy -- up to the bankruptcy of</p> <p>8 LBM, so that then we were looking at the assets of</p> <p>9 Lehman Brothers in its entirety.</p> <p>10 Q. OK.</p> <p>11 A. And then -- and there, our function</p> <p>12 was to look at just the mortgage-related assets of</p> <p>13 the Lehman Brothers overall group. But the</p> <p>14 function was then the same, so assess estimates of</p> <p>15 value or prices for categories of assets, and we</p> <p>16 never really got to the risk management stage,</p> <p>17 obviously because no transaction occurred.</p> <p>18 Q. When you say assess the category or --</p> <p>19 categories of assets, were you provided a list of</p> <p>20 all the CUSIPs that Lehman held at the time or --</p> <p>21 A. We were provided various lists of</p> <p>22 CUSIPs or other such descriptions of assets that</p> <p>23 Lehman held. I mean in the lead up to the 14th,</p> <p>24 it was -- because it was the whole Lehman entity,</p> <p>25 there were other assets, too, that weren't</p> | <p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 securities. For example, loan portfolios in</p> <p>3 Europe, so they didn't have CUSIPs. But we would</p> <p>4 also attempt to assess some kind of price for</p> <p>5 those based on some simple analysis.</p> <p>6 Q. Your mandate during that period was</p> <p>7 beyond just securities, it was any illiquid asset?</p> <p>8 A. No. Then we were really strictly</p> <p>9 mortgage or asset-backed type assets. There was</p> <p>10 an overall coordination of many groups. At that</p> <p>11 point there were many groups or many trading desks</p> <p>12 at Barclays in Europe and the U.S. that were</p> <p>13 attempting to assess the entire Lehman Brothers</p> <p>14 balance sheet or list of securities and assets.</p> <p>15 So we were then just one, we were focused on one</p> <p>16 part of that.</p> <p>17 Q. And did you come to New York to</p> <p>18 participate in those discussions?</p> <p>19 A. We are based in New York.</p> <p>20 Q. So you participated in meetings with</p> <p>21 Lehman folks during that weekend?</p> <p>22 A. I don't know whether we did by that</p> <p>23 weekend. That was really -- I thought that was --</p> <p>24 I thought in the lead up to that week, there was a</p> <p>25 data room that was set up by Lehman. I never went</p> |

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2 to it actually, but one of the people that works  
3 for me did.

4 I would have been at Lehman over the  
5 weekend, but most of what we did was phone calls  
6 to people and -- I mean in reality, there is a --  
7 it is a -- there were many, many -- this was a  
8 phenomenally complex situation just because of the  
9 number of line items. So in many respects, the  
10 approach that we took to the analysis was high  
11 level down rather than bottom up, meaning to have  
12 accurately assessed the value of an individual  
13 security by reference to talking to a trader when  
14 there were then, say, 10,000 line items was less  
15 useful than being able to initially categorize  
16 things as residential mortgage-backed securities,  
17 credit card securities, et cetera, et cetera,  
18 subordinate, senior, and then have broad  
19 valuations based on where we know similar markets  
20 trade, and then each day we just refined.

21 Q. OK, I think I understood what you  
22 said. When you said bottom up, you mean if you  
23 had the luxury of time, you -- one might go CUSIP  
24 by CUSIP or security by security and try to assess  
25 the value of an individual security?

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2 categories of securities and how might we either  
3 plan to dispose of the assets or in the short term  
4 risk manage the assets.

5 Q. When you say risk manage, you mean  
6 hedging?

7 A. For example, hedging, yeah.

8 Q. So the process you have described, is  
9 it correct to say it started on the weekend of the  
10 13th or 14th and then continued in some form  
11 throughout the week of the 15th?

12 A. Yes.

13 Q. And how did it change -- well, as I  
14 understand it, on the 14th, it was concluded that  
15 there was no deal between Barclays and Lehman,  
16 correct?

17 A. That's what I understand, yeah.

18 Q. And how did you learn that the talks  
19 were going to start again?

20 A. I think it was at some point on the  
21 15th or 16th, we were once again asked to look at  
22 another population of assets that was a subset of  
23 the population of assets that we had been looking  
24 at the previous week.

25 Q. That was going to be my question. How

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2 A. Right, right.

3 Q. But you didn't have the luxury of  
4 time. Is that what I hear you saying?

5 A. Luxury of time and even time -- then  
6 markets are actually moving, so I would have to  
7 be -- if you had infinite resources for a very  
8 short period of time, then you might try to go  
9 bottom up.

10 As -- once we had a definitive set --  
11 it was really -- so the first exercise was -- and  
12 this was repeated as we went through the 15th,  
13 through the various iterations of the asset  
14 population, was one, do we have a complete  
15 description of the population, can we categorize  
16 the population, can we estimate valuations for the  
17 categories within the population, can we refine  
18 and improve those estimates, increasingly becoming  
19 more granular. Have we engaged the appropriate  
20 desks, trading desks within Barclays to -- or  
21 existing Lehman desks, to provide us as much input  
22 to where markets are or what securities -- what a  
23 particular security is.

24 And then the last part was how do we  
25 risk -- what is the risk associated with these

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2 did the population of assets change from the  
3 weekend to the 15th?

4 A. It was now the assets of LBI or what  
5 we thought were the assets of LBI as opposed to  
6 the assets of, say, LB. Because there we were  
7 looking at all assets regardless of whether they  
8 were held by LBH or LBIE or -- so, but by that  
9 point we knew we were just looking at or what we  
10 thought we were looking at was the assets that  
11 were included in the balance sheet for LBI.

12 Q. OK. Now, were you provided additional  
13 information on the 15th or did you just use the  
14 information you had previously acquired or --

15 A. No, we -- I'm not sure -- we may have  
16 been provided some of that information the  
17 previous week. Again, because the scope of the  
18 exercise had narrowed from the entire -- you know,  
19 us participating in a small part of assessing the  
20 overall assets of Lehman Brothers to a larger part  
21 of a much -- a subset of that overall population,  
22 which was now just the LBI assets.

23 In keeping with the process of  
24 improved granularity of analysis as the population  
25 shrunk or the -- we were able to look at a more



| Page 22                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | Page 23                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
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| <p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 refined list of assets on the 15th and spend more</p> <p>3 time. But we definitely reused the -- where there</p> <p>4 was overlap with analysis that we had done the</p> <p>5 previous week, we definitely reused it.</p> <p>6 Q. Let's start with this document. I</p> <p>7 think -- well, during the -- now we are in the</p> <p>8 week of the 15th, starting Monday. Ultimately</p> <p>9 some kind of agreement was concluded between</p> <p>10 Lehman and Barclays on the 16th, correct?</p> <p>11 A. In relation to --</p> <p>12 Q. Well, an agreement was signed on the</p> <p>13 16th. Are you aware of that?</p> <p>14 MR. STERN: Objection to the form.</p> <p>15 A. I don't --</p> <p>16 Q. Did you ever see what has been termed</p> <p>17 the asset purchase agreement in connection with</p> <p>18 the Lehman-Barclays transaction?</p> <p>19 A. I have seen drafts of it.</p> <p>20 Q. Were you involved in the -- I am just</p> <p>21 trying to get a scope of what your involvement</p> <p>22 was. Were you involved in the back and forth</p> <p>23 negotiations as to the terms of the asset purchase</p> <p>24 agreement?</p> <p>25 A. No, no.</p>                                                                                                       | <p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 Q. In the course of your -- well, let me</p> <p>3 get back to the 15th. On the 15th and 16th, did</p> <p>4 you participate in meetings between Barclays and</p> <p>5 Lehman?</p> <p>6 A. I don't think so. I mean we may have</p> <p>7 done on the 16th, but if it was, it was strictly</p> <p>8 to do with identifying the -- you know, a trader</p> <p>9 who may have been able to provide us clarity about</p> <p>10 what a particular security was. But I think --</p> <p>11 but there wasn't an awful lot of that that we had</p> <p>12 to do.</p> <p>13 And it was very -- you know, we did</p> <p>14 more of that in the previous week when we were</p> <p>15 trying to understand what the asset population</p> <p>16 was. That was really when we needed some</p> <p>17 assistance with people from Lehman.</p> <p>18 But on the 16th, around the 15th and</p> <p>19 16th, the only thing I could think, we probably --</p> <p>20 there must have been some dialog, have we got a</p> <p>21 list of securities to look at. So I would think</p> <p>22 that we were sent lists, so if you wanted to</p> <p>23 include e-mails sending us lists of securities,</p> <p>24 I'm sure that yes, there is communication.</p> <p>25 But communication in the sense of did</p> |
| Page 24                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | Page 25                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 we sit down and have conversations with people,</p> <p>3 very, very limited.</p> <p>4 Q. Well, I understand the providing of</p> <p>5 information part of the discussion, but separate</p> <p>6 from that, was there a back and forth as to the</p> <p>7 valuation or marking of particular Lehman assets</p> <p>8 that were the subject of the discussions?</p> <p>9 A. I don't think so really. The -- on</p> <p>10 the 15th and 16th. No. I think for the most part</p> <p>11 the 15th and 16th was trying to establish have we</p> <p>12 got -- these exercises are -- they take a lot of</p> <p>13 effort.</p> <p>14 Q. Sure.</p> <p>15 A. And the reason why we were involved</p> <p>16 was because we had some proficiency in dealing</p> <p>17 with understanding new populations of securities</p> <p>18 or assets, because that's what we had been doing</p> <p>19 for the last year and a half.</p> <p>20 So one thing that we -- one thing that</p> <p>21 is critical is to insure that you are not spending</p> <p>22 a tremendous amount of time working on things that</p> <p>23 were irrelevant. So the first thing we need is to</p> <p>24 be sure that we have got the correct population.</p> <p>25 If we are spending time analyzing something that</p> | <p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 isn't going to be delivered, then we have</p> <p>3 definitely wasted time. We are coming up with a</p> <p>4 wrong valuation and we will never manage the</p> <p>5 correct risk.</p> <p>6 So I think mostly around the 15th and</p> <p>7 16th would have been, well, OK, what are we</p> <p>8 looking at this time? And of course during the</p> <p>9 course of that week, and that's why -- you know,</p> <p>10 my -- the only reason why I am vague as to exactly</p> <p>11 what happened the 15th, 16th and 17th, is that it</p> <p>12 changed so much so rapidly, that most of what was</p> <p>13 happening on the 15th and 16th and almost all of</p> <p>14 what we were looking at became redundant by some</p> <p>15 time on the 16th, 17th or 18th.</p> <p>16 MR. STERN: Let me just to clarify, I</p> <p>17 take it you are focusing on what Mr. King's</p> <p>18 role was and what he was involved in, and</p> <p>19 when he uses the term "we," he is referring</p> <p>20 to himself and his group as opposed to</p> <p>21 Barclays as a whole.</p> <p>22 THE WITNESS: That's absolutely</p> <p>23 correct.</p> <p>24 MR. HINE: I understand. I</p> <p>25 understand.</p>                                                                                            |

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2 Q. But, Mr. King, you folks didn't accept  
3 the -- at face value the valuations or marks that  
4 Lehman had put on various asset groups, did you?

5 A. No.

6 Q. Did you come to some conclusions about  
7 the accuracy of Lehman's marks when you were  
8 looking at all these asset groups?

9 A. It is a peculiar way to describe it,  
10 did we come up with some assessment of the  
11 accuracy of Lehman's marks. In some respects I  
12 could say I didn't care about Lehman's marks. I  
13 cared about what was a reasonable assessment for  
14 the value of the assets and ultimately what was  
15 the risk that we were going to have to manage.

16 If you think about the way a -- as a  
17 trader would think, we received phone calls from  
18 somebody saying I'd like you to buy -- would you  
19 be interested in buying the following at a price  
20 or 72. It is fascinating it is 72 they would like  
21 to sell it to me at, but mostly I am interested in  
22 where we would be interested in buying it, 55.

23 So can I therefore say ex post facto  
24 that, you know, well, I have got some -- I didn't  
25 think their offer of 72 was particularly accurate,

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2 that's an inadvertent output of the fact that we  
3 wanted to bid it at 50-something.

4 Q. I think my question exhibited my  
5 inexperience in this field, so I will try again.

6 Did you -- when you received the  
7 information from Lehman, it had some kind of book  
8 value ascribed to it by Lehman, correct?

9 A. Yes.

10 Q. Did you understand that by the time  
11 Barclays and Lehman signed an agreement, that  
12 there was going to be some kind of discount off of  
13 that book value for the pool of assets that  
14 Barclays was going to be acquiring?

15 A. The signing of the agreement on the  
16 Tuesday that you have told me about?

17 Q. Yes, yes.

18 A. -- or later --

19 Q. Yes.

20 A. I don't know much -- I don't really  
21 know what agreement was reached on the 16th. All  
22 I know is that there was some assets that we were  
23 looking at. I would assume that it wouldn't have  
24 been at all a surprise to anybody that a bid, even  
25 a reasonable bid or reasonable assessment of a bid

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2 for small size would be at a discount to book  
3 value if that's the valuation that you are  
4 referring to. Book value being where it is held  
5 in books and records.

6 Q. Well, I guess I understand your  
7 answer, but do you have any recollection of  
8 discussions during that period of time -- and  
9 again I'm talking the 15th and 16th -- about  
10 either discounting or reducing the values that  
11 Lehman had ascribed to these pools of assets in  
12 order to come to an agreement as to the pool of  
13 assets or the marks for the pool of assets that  
14 Barclays was going to acquire?

15 MR. STERN: This is you personally.

16 A. This is me personally. I have never  
17 had any conversations with anybody at Lehman about  
18 discounting Lehman's marks. It is definitely the  
19 case that in the crudest -- if somebody said to  
20 me, Stephen, here is a security, you don't know  
21 what it is, but, you know, it is -- it has a  
22 price -- the last time it traded it had a price of  
23 50, let's say, mentally, I would say, well, I know  
24 it is not -- I certainly wouldn't be bidding 50.  
25 I would be bidding half of that or 20 percent of

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2 that or 80 percent of that or some number.

3 So it is definitely the case that when  
4 we were trying to guess what might be a reasonable  
5 value, in a very, very distressed market --

6 Q. Sure.

7 A. A very, very distressed market for a  
8 very, very substantial number of assets that  
9 Barclays would want to be selling, and Barclays  
10 didn't -- bear in mind, Barclays didn't want these  
11 assets. The assets were -- you wouldn't want to  
12 hold on to them. They consume capital. They need  
13 to be funded. Funding was expensive, capital was  
14 expensive.

15 The assets were part of, you know, a  
16 deal, and therefore, they would -- and, you know,  
17 the -- I avoided the word "hedging" when you used  
18 hedging because hedging doesn't really -- hedging  
19 still means there is a left-over risk. You never  
20 really -- especially with assets like this.  
21 Hedging is just, well, I have got one thing that  
22 I'm short against something I am long. It is not  
23 very well hedged, there is still a risk, and  
24 that's why banks and hedge funds have had quite a  
25 lot of difficulty in the last few months.



| Page 30                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Page 31                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
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| <p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 So we knew that the objective would be</p> <p>3 that we need to dispose of this risk. That was</p> <p>4 the objective. So if I was looking at a portfolio</p> <p>5 of assets, and you held the assets at 100, let's</p> <p>6 say, I'd say I don't know -- and I felt</p> <p>7 comfortable that I understand what the assets are,</p> <p>8 my bet is I couldn't sell those for more than</p> <p>9 80 cents of where you have currently ascribed a</p> <p>10 value to them.</p> <p>11 So yes, when we -- as a desk, the "we"</p> <p>12 meaning my group, one of the first things that we</p> <p>13 did was say, let's just assume that the stuff we</p> <p>14 don't know is at 50 percent of book value. The</p> <p>15 stuff that is exchange traded equities is at</p> <p>16 95 percent of where it is, because that was a --</p> <p>17 the crudest form of guess.</p> <p>18 Q. Is that the type of analysis you were</p> <p>19 doing on the 15th and 16th when you described -- I</p> <p>20 think you previously talked about a top-down</p> <p>21 approach as opposed to bottom up?</p> <p>22 A. Yes. Because you do that -- really if</p> <p>23 you think about it, you repeatedly do that same</p> <p>24 process at an ever-more granular level. Even if</p> <p>25 you got down to an individual security, a trader</p> | <p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 would say I've projected -- the thing about some</p> <p>3 of these securities and assets is, unlike -- not</p> <p>4 all of them but some of them, and certainly the</p> <p>5 ones that we would have been looking at at this</p> <p>6 time, they are not -- even though many of them are</p> <p>7 called fixed income or debt instruments, the</p> <p>8 amount of cash that they would be expected to</p> <p>9 ultimately pay is actually uncertain, either</p> <p>10 because there is a lot of risk associated with the</p> <p>11 borrower or there is a prepayment risk or there is</p> <p>12 something that makes the cash flow uncertain.</p> <p>13 So the way a trader would look at it</p> <p>14 is to say, I'll make a -- I'll form a view of how</p> <p>15 much cash that I would want -- that I expect to</p> <p>16 receive on this security, and then I would want to</p> <p>17 discount the amount of cash back to some price</p> <p>18 that I felt that I was earning an appropriate</p> <p>19 yield on. And then when a trader was then</p> <p>20 subsequently bidding, they then may provide --</p> <p>21 say, actually I'll bid 80 percent of that.</p> <p>22 So whether it is at the portfolio</p> <p>23 level, when we are looking at a whole balance</p> <p>24 sheet, or an individual CUSIP, in many respects</p> <p>25 the process is the same. It is about how</p> |
| Page 32                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Page 33                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 confident you can be that you have assessed</p> <p>3 everything correctly, because there is so much</p> <p>4 uncertainty.</p> <p>5 Q. I think I understand that.</p> <p>6 So during this early stage now, the</p> <p>7 15th and 16th, is it correct to say you're looking</p> <p>8 at particular asset classes or groups of assets by</p> <p>9 type and performing this type of analysis on them?</p> <p>10 A. Yes, yes.</p> <p>11 Q. And so certain groups of assets, you</p> <p>12 would be willing to pay a higher percent than</p> <p>13 other groups, right, or --</p> <p>14 A. Yeah. Because to reflect the idea</p> <p>15 that the uncertainty about the price or the cash</p> <p>16 flows was more or less clear.</p> <p>17 Q. So were there particular assets or</p> <p>18 groups of assets within the Lehman portfolio that</p> <p>19 was supposed to be sold to Barclays that warranted</p> <p>20 much deeper discounts than others?</p> <p>21 A. Yes.</p> <p>22 Q. And which were the most discounted --</p> <p>23 or which groups would require the most discount</p> <p>24 from your perspective?</p> <p>25 A. The assets that are the typical assets</p>                                                                                                                                                    | <p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 that my group manages, which is things like</p> <p>3 mortgage-backed securities, deeply distressed</p> <p>4 credit securities, things for which there is a</p> <p>5 very, very limited market and poor visibility on</p> <p>6 the expected cash flows.</p> <p>7 Q. And what kind of discounts would those</p> <p>8 groups of assets get during this week?</p> <p>9 A. To what?</p> <p>10 Q. I don't know, did you -- again,</p> <p>11 talking about the 15th and 16th, did you say --</p> <p>12 again, I might be showing my ignorance here --</p> <p>13 here is a pool of mortgage-backed security, a lot</p> <p>14 of uncertainty here, let's mark their -- let's</p> <p>15 discount their marks down by, say, 50 percent?</p> <p>16 A. Right.</p> <p>17 Q. You did.</p> <p>18 A. Yes.</p> <p>19 Q. OK. And then other, presumably other</p> <p>20 categories more secure, more visible -- again, I</p> <p>21 might be displaying my ignorance, but perhaps</p> <p>22 government securities might warrant a much smaller</p> <p>23 discount in the mark?</p> <p>24 A. Precisely.</p> <p>25 Q. Is that right?</p>                                                                                                                                                                                                                                                                      |

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A. Precisely.

(Exhibit 388-B, document Bates stamped BCI-EX-S 74256 through 257 marked for identification, as of this date.)

Q. Mr. King, I am handing you a copy of a document marked as 388-B, which is a two-page document with Bates numbers BCI-EX-S 00074256 through 257.

After you have had a minute to look at it, let me know, and I have a question or two about it.

A. OK.

Q. Have you had a chance to look at the document?

A. Yeah.

Q. Have you ever seen this document before?

A. Yes.

Q. When?

A. I remember -- this actually is, I think this is my handwriting on it, and I also saw it yesterday.

Q. When you say "my handwriting on it," you are referring to the second page of the

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document?

A. Yes, yes. Sorry, I thought you were suggesting that I look at both pages.

Q. Yes, yes, I was.

And is it fair to assume that this document was sent to you on the 17th by Mr. Yang?

A. Well, I would have seen this document before the 17th. He is sending it to James Walker. He just happens to be copying me.

Q. Let me distinguish, when you say "this document," the covering e-mail is on the 17th, but the second page, you have seen that before the 17th?

A. Yes.

Q. Can you tell me when you first saw that, the second page?

A. I saw -- I think I saw a hard copy of this at some point -- was this -- yeah. This is an e-mail and this is a hard copy, so I don't quite know how -- whether Jasen had scanned it or how the two became connected, but we had seen -- can I ask that? Is that --

Q. Well, this is how it was produced. It doesn't really matter about the -- where Mr. Yang

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got it, so I'm not going to ask you about that. I just want to focus on the second page of this document.

A. I'd seen this in hard copy, which is why I have scribbled on it at some point after the -- after the 12th. It was produced on the 12th.

Q. This was produced by Lehman to Barclays on the 12th?

A. That's what it says on the top left-hand corner of the second page, Lehman Brothers balance sheet by GAAP asset type 9/12. So I couldn't have seen it before the 12th, but I must have seen it at some point thereafter, but I'm not exactly sure when.

Q. You believe you saw it over that weekend at some point?

A. I had seen it during the weekend. I might have seen it during the weekend, but that was in the old -- that was in the first iteration of the potential acquisition.

So I don't know when I saw it. All I know is I definitely saw it before he sent it to James Walker.

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Q. I guess that was my question. Was this part of your analysis or discussion over the weekend for the first iteration, or did you --

A. I don't remember.

Q. Or did you use it in connection with the second iteration on, say, the 15th and 16th?

A. I can confirm the latter part. I don't remember the former. We might have seen it in relation to the first part, but then it is only a subset. I don't really know why -- in the first iteration of the transaction, where it was buying Lehman, we never really had thought about Lehman as being multiple entities. So looking at LBI specifically prior to Sunday would have been something I wouldn't have focused on.

So I don't think I looked at it at the weekend. I would think I looked at it on the Monday or Tuesday when we were told here is the next iteration of the transaction.

Q. OK, OK. And you are referring to the Lehman Brothers, Inc. at the top of this document?

A. Yes. This is Lehman Brothers, Inc., as opposed to Lehman Brothers. But up to the Sunday, we were thinking Lehman Brothers. So the

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2 first thing I would have asked if somebody sent me  
3 this is, to my point about population, am I  
4 looking at everything, because otherwise this is  
5 redundant.

6 Whereas on the Monday, if someone said  
7 we are now looking at LBI, I can say is it correct  
8 that this is the population of what we are  
9 supposed to look at, and someone could say yes,  
10 and that would make sense. Now we have got  
11 something to work on.

12 So I would think I saw this on the --  
13 and also, by the way, these things, even though  
14 they say 9/12, typically it would take 24 to 48  
15 hours at least for somebody to produce this.

16 Q. OK.

17 A. So I very much doubt this -- although  
18 it is of the 12th, the 12th is close of business  
19 on the Friday, which means it almost certainly  
20 didn't exist until something like the Sunday, and  
21 I would think it was shown to us on the Monday or  
22 Tuesday.

23 Q. OK, fair enough.

24 Do you recall what you were -- I see a  
25 lot of handwriting and a lot of numbers. Do these

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2 e-mail explains that we have started to get files  
3 that should be all of this, but they don't tie  
4 out.

5 He actually points out, you know,  
6 corporate obligations, corporate stocks do not tie  
7 out to the summary. So we have been sent files  
8 that purport to be the same but that don't tie  
9 out.

10 Q. So tie out in your understanding means  
11 he is trying to compare the files of individual  
12 securities with the line item in the -- on this  
13 balance sheet and see that they add up to that  
14 total?

15 A. Exactly right. So he would have had  
16 something that says total corporate obligations  
17 and spot total, let's say. If he would have been  
18 sent a file that also purports to be corporate  
19 obligations and let's say included then the line  
20 items, a notional or a price, so he could  
21 calculate a mark, add the marks up, he ought to  
22 get back to that number, and his e-mail indicates  
23 that they don't.

24 Q. His e-mail is trying to, as you said,  
25 get the proper population of the securities in

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2 refresh your recollection about what you were  
3 analyzing?

4 A. No. These are sort of typical  
5 scribble from me. The e-mail is -- the e-mail  
6 covering is quite elucidating because it  
7 highlights -- the fact that it is a physical --  
8 one of the problems we had at that time was this  
9 is a physical. There also was -- I remember that  
10 there was -- and I don't have this, but there was  
11 a paper copy again of securities that -- these  
12 numbers are produced by Lehman's systems. So  
13 there would have been line items of all the  
14 individual securities that fed up into these  
15 numbers.

16 What Jasen is highlighting on the  
17 front is that we have obviously by the 17th, this  
18 definitely would have been the case as well,  
19 started to receive files, which would have been  
20 Excel files, I would think, and what he is  
21 starting to explain is, all right, we have started  
22 to try to understand what is the population that  
23 leads to this. If this is what we are buying, is  
24 the assets that are currently on -- the assets  
25 that are currently on LBI's balance sheet, his

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2 each group?

3 A. Yeah. And you see, as you say -- my  
4 sentence is that I have asked Jasen to send this  
5 to James, because I thought I'd seen something  
6 that looked similar to it that might help us to be  
7 able to find out. Because with this, there is  
8 almost -- again there is almost nothing you could  
9 do. You would say -- using the percentage  
10 approach, you would have to just take very heavy  
11 haircuts to these large numbers and say I don't  
12 really know what is behind this.

13 Then on his e-mail he is saying, we  
14 have got some stuff but it doesn't tie out to  
15 those numbers, and furthermore, we don't have  
16 listings for derivatives category. We are able to  
17 tie out the asset listings we were given on  
18 Monday. We were given some asset listings on  
19 Monday, so he is showing on Monday there were some  
20 files.

21 And then the last sentence is pretty  
22 interesting because it highlights the fact that  
23 the problem wasn't a static problem. It was a  
24 dynamic problem. So he has a list of securities,  
25 but he says the government and agencies book is --

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2 although we understand from Clement Bernard that  
3 the government and agencies book is shrinking as  
4 trades are unwound.

5 The problem here was the  
6 counterparties to Lehman were terminating their  
7 trades. So we all have now realized that although  
8 Lehman was sending us populations, minute by  
9 minute, counterparties to Lehman were terminating  
10 trades. Therefore, this population is changing.

11 Q. I understand.

12 A. And this was only supposedly as of the  
13 12th, which is the Friday. So by the 17th, the  
14 probability that these securities still were on or  
15 available to LBI was low.

16 Q. OK. Thank you for that.

17 I would like to step back to before  
18 the Wednesday, back to the Monday when you're  
19 somehow using this document in connection with  
20 your assessment of the Lehman assets. Are  
21 these -- if you look on the left-hand column, it  
22 has "GAAP asset class." Do you see that?

23 A. Yes.

24 Q. And then it has six different asset  
25 classes listed. Are these the -- are these asset

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2 classes that fell within your purview in the  
3 principal mortgage trading group as groups of  
4 assets that you were asked to look at?

5 A. Not on -- not at this time.

6 Q. Not on the 15th or 16th?

7 A. No. We were -- the assets that we  
8 were looking at were the -- it was starting to be  
9 the case around the 15th and 16th that I had -- I,  
10 we, my group, had two hats that we were wearing.  
11 One was to look specifically to end up as the  
12 ultimate risk -- actually that's not true, not to  
13 end up as the ultimate risk manager, but to assess  
14 the value of specific instruments. Here the line  
15 item in here that would say total mortgage or  
16 mortgage-backed total, the 6 and a half billion.  
17 So that is a category that my group would have  
18 expected to -- or be capable of risk managing.

19 Q. Right.

20 A. That's one hat.

21 There is a second hat that we were  
22 starting to wear, which was to facilitate in the  
23 coordination and aggregation of the opinions of  
24 other expert desks within Barclays on the other  
25 line items. So, for example, total government and

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2 agencies securities, governments and agencies are  
3 traded by a -- you know, there is a desk at  
4 Barclays that trades governments and agencies.

5 Q. Is that desk outside your principal  
6 mortgage trading group?

7 A. Yes, yes. It is in Eric's world, but  
8 it is a trading desk.

9 Q. Eric who?

10 A. Eric Bommensath, my boss. It is a  
11 trading desk, a customer trading desk, and we  
12 would have no -- my desk would have no advantage  
13 in providing a practical assessment of whether --  
14 of what the valuation pricing or risk management  
15 issues were associated with 39 billion dollars  
16 worth of governments and agencies.

17 But with the hat of coordinating, we  
18 were starting around the 15th or 16th to  
19 facilitate in coordinating and aggregating that  
20 information.

21 Q. So can I just see if I understand what  
22 you said.

23 Your group, the principal mortgage  
24 trading group would have -- were provided the  
25 assessment, if you will, as to the total mortgage

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2 and total -- and mortgage-backed securities line  
3 item, but as to the other five line items here you  
4 would have acted as facilitator?

5 A. Correct.

6 Q. Assembling the assessments of other  
7 groups within Barclays?

8 A. Correct.

9 Q. After you assembled those, presumably  
10 that enters into the negotiations between Lehman  
11 and Barclays in some way?

12 A. Then I would have provided an  
13 assessment to somebody as to where the current  
14 estimate for the cumulative value in our view of  
15 value was for this portfolio and particular  
16 categories.

17 Q. Who did you provide that to?

18 A. I don't remember. It might have been  
19 a variety of people. It could have been to -- it  
20 would have been at various times to Patrick or to  
21 Mike or to whoever was asking me for it at that  
22 moment, James Walker, whoever. Some various  
23 people at various times asked for an assessment of  
24 value for different purposes, and we would provide  
25 it.



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Q. Now, are you talking about people within Barclays or are you talking -- in other words, here is my -- my confusion here is this: Are you engaged in any kind of one-on-one conversations between Lehman as to the types of discounts we might apply to these different groups?

A. No.

Q. Or are you just providing it to other people within Barclays?

A. Other people within Barclays.

Q. Do you recall the conclusions you reached on the 15th or 16th about these particular asset types as far as the amount of discount that would be required?

A. Not particularly. I remember that the -- I remember that the mortgage securities, for example, we carried around -- we had just said I would -- I don't think -- I would be -- I think we used something like 50 percent for the mortgage securities, for example.

Q. OK. OK. Do you recall what you used for the other categories, any of the other categories?

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A. No.

Q. Is it fair to say, as I think we previously discussed for the less risky or more, I think you used the word visible categories, you would use a smaller discount than the 50 percent?

A. Yes. And that's an interesting thing, because I remember actually that one of the categories here, total government and agencies, I remember thinking -- I think you can sort of see in some of the scribble here as well, for example, the 3.2, I could see a number 3.2 here, which I would guess is half of the 6.5 billion or the half that we were saying that -- one of the problems with that category in particular was that we didn't even know what some of the securities were. They were just -- you know, because if you look at a CUSIP, a CUSIP doesn't tell you anything. You have to get a description to go with a CUSIP.

Q. When you say "that category," talking about mortgage backed?

A. Mortgage backed. Unfortunately banks have a tendency of using mortgage and mortgage-backed securities to mean anything that isn't obviously something else. So it isn't just

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mortgages. It is CDOs, it is manufactured housing, it is franchise loans. It is a lot of stuff. Because you notice it doesn't obviously fit into any of those other categories, so it is stuff.

Because it is stuff, some of it you would have no idea from the CUSIP or even the description whether it was a performing or nonperforming security, a senior obligation or a junior obligation. You would actually have to go to Bloomberg, or if in some cases it wasn't listed on Bloomberg, go to a trader and say what is this.

Some of these, for example, were what they call whole business securitizations, which are secured lendings against assets of corporates. And there you would have to understand something about the company.

Q. So in the end, because of all these uncertainties, you ascribed a 50 percent discount rate to that line item?

A. If someone said -- yeah. But for a -- if I was asked for an initial guess, a guess, I would say, you know, I can't imagine that -- if you turned around and asked somebody for a bid of

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6 and a half billion dollars -- these securities for example, mortgage and mortgage-backed securities, they trade in -- they have -- many of them have face values, notionals of millions of dollars. Single numbers of millions of dollars. So you can see that 6 and a half billion dollars of assets is thousands of line items.

Furthermore, many of them will trade at a few cents on the dollar, 5, 10, 3, 20. So there is a tremendous level of uncertainty and inaccuracy about it. And the 6 and a half billion dollars of assets, to sell 6 and a half billion dollars of assets would take a tremendous amount of time. Actually, it did ultimately take the better part of a year.

So therefore, to just guess, I can't believe that if they are marked there, that if you needed to sell them or you wanted to bid them, that you would bid more than 50 cents on the dollar, would have been a guess.

Now, remember, subsequently we did some work on it and came up with similar sort of numbers on it, which is why I happen to remember that one.

| Page 50                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | Page 51                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
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| <p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 Q. That's the one that is within your</p> <p>3 group?</p> <p>4 A. That's the one within the group.</p> <p>5 Interesting thing, the government and agencies</p> <p>6 securities, 39 billion, I remember on -- at around</p> <p>7 this time on the 15th and 16th, I had a pretty</p> <p>8 rosy view of the liquidity of government</p> <p>9 securities and agencies, mostly because I was</p> <p>10 pretty ignorant of what they were. Of course</p> <p>11 because of the collapse of Lehman in the previous</p> <p>12 two days, there was no liquidity in these either.</p> <p>13 So these agency securities turned out</p> <p>14 to be some of the hardest securities to sell</p> <p>15 subsequently. There was a -- there wasn't</p> <p>16 39 billion dollars of them, but there was a</p> <p>17 significant population of agencies securities that</p> <p>18 were in the Fed repo facility.</p> <p>19 They took nine months to sell at a</p> <p>20 significant discount, much more than I would have</p> <p>21 ever guessed on that day, because I would have</p> <p>22 thought they were liquid. There were no liquid</p> <p>23 markets at this point.</p> <p>24 MR. STERN: Bill, could we take a</p> <p>25 brief break?</p>                                                                              | <p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 MR. HINE: Sure, sure.</p> <p>3 (Recess)</p> <p>4 BY MR. HINE:</p> <p>5 Q. Mr. King, I would like to continue</p> <p>6 with the second page of Exhibit 388-B, if you</p> <p>7 will. On the right-hand side of the balance sheet</p> <p>8 it's entitled "Net Short Inventory." Do you see</p> <p>9 that?</p> <p>10 A. Um-hm.</p> <p>11 Q. Was this side of the balance sheet</p> <p>12 something that you worked on in connection with</p> <p>13 these transactions, or is that someone else at</p> <p>14 Barclays?</p> <p>15 A. No. There were -- it was one of the</p> <p>16 things that -- they weren't really separable</p> <p>17 because the longs and shorts obviously were</p> <p>18 supposedly interrelated. And you can see that --</p> <p>19 it kind of highlights as well that something like</p> <p>20 the mortgage or mortgage-backed pool, if you will</p> <p>21 notice, is -- there are very few in the way of</p> <p>22 shorts against that because it is not written --</p> <p>23 it is not a -- something that is hedgeable that</p> <p>24 you would expect to have two directional markets.</p> <p>25 People buy stuff, therefore they are long,</p> |
| Page 52                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | Page 53                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 therefore all of the asset -- there is assets and</p> <p>3 there is no liabilities.</p> <p>4 Whereas something like government and</p> <p>5 agencies is an active two-way market, people</p> <p>6 borrow and sell. You can borrow securities and</p> <p>7 you can sell them, so there would be shorts.</p> <p>8 Likewise, you know, corporate equities and stocks,</p> <p>9 et cetera. Again, nonmoney market instruments and</p> <p>10 CDs, there is no way to short them.</p> <p>11 Q. So is it fair to say with respect to</p> <p>12 the right side of this balance sheet, you</p> <p>13 performed the same function you previously</p> <p>14 described, assembling assessments for the first</p> <p>15 five line items, and supervising your group and</p> <p>16 providing assessments for the last line item?</p> <p>17 A. That's correct. And as you see, there</p> <p>18 is really nothing there. So really it would have</p> <p>19 been that we would have provided the list of longs</p> <p>20 and shorts in files and sent them to the</p> <p>21 respective desks.</p> <p>22 And as Jasen says, of course, in</p> <p>23 reality -- therefore, I can't really comment much</p> <p>24 on those values because there are -- there is</p> <p>25 almost nothing that's relevant to the work that my</p> | <p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 group was doing for itself for the last line item.</p> <p>3 As Jasen's e-mail on the front says, the shorts</p> <p>4 were evaporating as people closed out trades --</p> <p>5 bad choice of words I suppose. They were</p> <p>6 disappearing as people actually closed out trades</p> <p>7 against Lehman, and within 24 hours of this</p> <p>8 Wednesday, I think they became irrelevant. So</p> <p>9 there is very little work that was done on that</p> <p>10 right-hand side.</p> <p>11 Q. I understand.</p> <p>12 I think you said earlier that you were</p> <p>13 not engaged in one-on-one discussions with Lehman</p> <p>14 about the valuations of these different groups of</p> <p>15 assets?</p> <p>16 A. Correct.</p> <p>17 Q. Was there someone at Barclays who was</p> <p>18 so engaged?</p> <p>19 A. I don't know.</p> <p>20 Q. You don't know. OK.</p> <p>21 Before we leave this sheet, can I ask</p> <p>22 for a translation on some of your handwriting.</p> <p>23 The phrase says 3.8 and there's a text. Do you</p> <p>24 see that?</p> <p>25 A. Yeah.</p>                                                                                       |



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the 65.115, whether they are even based on the same date, same populations. But I do remember that fact about the mortgage and mortgage-backed part.

MR. STERN: And that's independent of Exhibit 19?

A. Yes. You can't derive that from -- you can't see that -- I don't remember that from seeing Exhibit 19 previously, and I'm not deriving it from that.

I am deriving it from a combination of memory about discussions around that 6 and a half billion dollars of mortgage and mortgage-backed securities that are on the 388 page 2, and the fact that I can see there is only 2.7 billion on the mortgage line on Exhibit 19.

Q. I understand.

A. But I don't really -- I don't know the -- I haven't seen this before, I haven't seen Exhibit 19 before. At least I don't remember seeing it. Therefore, I don't remember. It wouldn't surprise me that 72 and a half or 70 were -- because, as Jasen's e-mail says, things changed by that day.

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Q. Let's talk about the mortgage-backed securities for a second. At some point in time it was agreed that Barclays would only take half of those securities, correct?

A. Yeah.

Q. And was it later agreed that they would take more than that?

A. As I say, as I pointed out earlier on, one of the difficulties here is that all of what we are discussing, as far as I know, as far as we were concerned, became irrelevant within hours or days of the 16th. So the entire discussion about this by the 17th we had put out of our minds. Or the 18th.

Q. "This" meaning the valuation exercise you were talking about earlier?

A. Yes. Because -- and that's very challenging -- and we had to prioritize, because in many respects around this time we were working literally 24 hours a day. And so the only way to manage this was to say that's now redundant, I don't want to discuss it, I don't care about it, we need to focus on what we need to deliver, because someone has asked us something within an

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hour and a half. So now we are going to move to that.

So at some point -- so there are -- unfortunately you are asking me about things that within a day or so were irrelevant to us.

Q. "Us" meaning --

A. "Us" meaning my group.

Q. OK. Well, tell me then why this all became relevant. I assume you are talking about in the Wednesday-Thursday time frame?

A. Yeah, at the point that we started to be asked to focus on the securities that were collateralizing the Fed repo facility.

Q. And what were you told in that regard?

A. That here is a population of securities that is collateralizing a loan that was provided to LBI by the Fed, and we were being -- we, Barclays was being asked to step into the position of the Fed. I don't know -- I wasn't part of the discussions as to why that would be the case or whether it -- or how it had come about or whether we would do it.

My group was then asked once again to provide an assessment of the probable value or --

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not just even the value actually. What was in the Fed facility.

Q. And who told you -- who told you all this? Who gave you these instructions?

A. The instructions to start to do that work?

Q. Yeah.

A. I think, I think it was Mike at the time asked us to look at it.

Q. Mike who?

A. Keegan.

Q. And did you -- you understand that there was a repo transaction entered into on September 18 involving Barclays and Lehman, correct?

A. Yes.

Q. That's the Thursday?

A. Yes.

Q. And so was this assessment you were asked to do prior to that repo transaction or was -- were you assessing the securities that had been posted into that repo transaction?

A. Both.

Q. So am I correct -- I assume the

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securities that were -- supported the Fed repo earlier in the week were somehow supposed to make their way into the September 18 repo involving Barclays and Lehman, correct?

A. Yes.

Q. So you were asked to assess both the Fed pool of securities and then what ultimately made it into the repo?

A. That's correct, yes.

Q. And did you come to any conclusions after that assessment?

A. Yes, the same -- we did the same process that we had done on each of the previous iterations. We were able to reuse some of the information because there was an overlap between the list of securities that were in the Fed facility, ostensibly, the Fed facility and also on the balance sheet of LBI.

We had -- I thought it was on the Wednesday, we were -- I thought it was on the Wednesday, not the Thursday, we were first asked to look at it, which is why I say about the Wednesday we started to put our pens down on what we were doing previously, and I remember that we

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had literally something like about an hour or hour and a half when we were first asked to look at it to -- and the population was 49 or so billion dollars of assets, and the question was, Stephen, what do you think these are worth?

Q. That was a population in the Fed repo or September 18 repo?

A. In the Fed -- sorry, is there a difference between --

MR. STERN: I think he is asking if you were looking at the Fed portfolio.

A. Well, we thought -- yes, at this point we were on the Wednesday or Thursday prior to the funding the night of the 18th, so there was a list of -- another list that was sent to us. I can't remember where the list came from, whether it was a list from the Fed to operations to us. I don't remember the information flow. But there was a list of securities. We were able to put that list of securities, you know, in a spreadsheet, compare it to various -- do various look-ups to see whether we could find whether we had ever put a price on anything that was in the Fed facility.

Recognizing that during the course of

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this week, Lehman had -- Lehman Holdings had become bankrupt on the 13th. So almost anything that we were saying about valuations was becoming redundant each minute because markets were moving so much.

MR. STERN: You said the 13th. Did you mean the 15th?

A. I am sorry, the 15th. I think -- the deal stopped happening on the 14th. Right. So that week that we are talking about, markets were moving tremendously because there was disarray because of the bankruptcy.

Q. There were other events taking place at the time as well, correct?

A. Yes. Also Merrill, so other things were going on that meant that, you know, literally if you had a portfolio of equities or a portfolio of Treasuries or portfolio of hedges or portfolio of mortgages, I would say during that week, there was no -- I mean the exercise to some extent was academic because we are putting a price on something for which there was no bid on any of it. No bid.

Q. Well, I think you said previously you

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were asked -- you mentioned a close to 50 billion dollar number.

A. Yeah.

Q. I still don't know that you answered. Is that the Fed pool or is that the collateral that was ultimately posted to the September 18 repo?

A. There I am describing what we were doing prior to the settlement, which was to provide -- the question that had been asked to us is, there is a Fed facility, I seem to remember it was 45 billion dollars, and it is backed by securities which have a value -- which I think subsequently or around that time we found was not of course -- it is neither a Barclays assessment of value or Lehman assessment of value, it is a JP as custodian for the securities assessment of value. Not a trader's value, so not a mark, just a -- you know, a price, a matrix price or wherever they got their prices from, assessment of how much collateral was supposedly supporting the Fed facility, and the Fed facility was sized by reference to haircuts to that assumed value.

So we were then asked to say, well, do

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we think that if you had to liquidate this portfolio, that you could recover the amount of the loan that was being made.

Q. And this is Wednesday night you're asked this?

A. This was I think Wednesday. I remember it being in the afternoon. And I would think it was --

MR. STERN: And Wednesday was the 17th?

A. I feel -- for some reason in my head I am carrying it around as a Thursday, but I think I have lost a day in there somewhere because I don't think I had a night. So --

MR. STERN: Just to help, I mean I don't think there is any dispute about this, the Fed replacement transaction was executed on the 18th, into the evening of the 18th, which is a Thursday. So if that helps you put things in perspective.

A. Yes. In my mind, the time between when we first were asked to look -- first became aware of the Fed facility transaction and the funding of it, was much shorter than a day and a

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half. So that may just have been because we didn't have a night.

Q. I appreciate that, for all of us who have missed nights as well.

So is this -- when you said you had about an hour and a half or two --

A. We had an hour and a half. There was a phone call to say we are being asked to take the Fed out of this. We didn't know the reason why or reason for the transaction or whether it was even necessarily related to it.

MR. STERN: "We" being you?

A. "We" being Barclays at that point. That Barclays was being asked to take the Fed out of its facility, out of this loan, and the question to us as my group was, what do you think about this value of securities?

Q. And what did --

A. And I found that an extraordinary situation, because we had just had the bankruptcy of Lehman and we were being asked whether or not we thought a portfolio of securities, which we barely knew, because we had only really encountered them a handful of days before, it was

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actually worth 45 billion dollars, and therefore, should we permit Barclays to lend 45 billion dollars against a portfolio of securities, and in any normal circumstances I would never make that statement or assertion.

Q. When you say 45, that's the amount of the Fed facility?

A. That's the amount I remember being the Fed facility.

Q. Secured by -- 45 was the value of the pool in the Fed, to your recollection, or was that the amount that the Fed --

A. That was the loan amount.

Q. And the value or purported value in the pool was about 5 billion more than that?

A. Well, you are using -- you are saying "value" as if that was value.

Q. OK.

A. The numbers that were the JP Morgan marks I think at some date, and I don't remember which date it was, they may have even been from the Monday or Tuesday or Wednesday, I don't remember how current they were. Markets were that volatile, but that they -- those numbers added up

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to -- I remember it being anything from 48 and a half to 49, to 49.7. There was some -- if you add up those numbers, it would appear that if it were possible, if it were possible to sell into the open market at those JP Morgan marks, then you would get 49 point or 48 point whatever it is for the portfolio.

Of course that's not a -- that's not a value.

Q. OK. But -- I understand that. I didn't mean to misuse that word.

So what did you conclude as to the -- what did you respond to the people who had asked you to make this assessment?

A. We thought it was possible that in a controlled way, we might be able to recover enough to cover the loan.

Q. Meaning the 45 number?

A. Meaning the 45.

Q. Now ultimately, that pool of collateral or a pool of collateral with some overlap to that gets rolled in -- gets used in connection with the September 18 repo, correct?

A. Yeah.

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Q. And were you asked to do anything in connection with that pool of collateral?

A. Yes. So now -- so that exercise of assessing the value of, liquidatable value of the securities that were supporting the facility -- the Fed facility was needed to be refined. So we just carried on.

Even though we had given that initial assessment, the reason why I think it fills a very compressed amount of time, we just kept refining and refining and refining our views as we analyzed the portfolio.

Q. Right.

A. As we went into the Thursday -- sorry, Thursday night into the Friday, there was another -- there is another very difficult piece that was in the middle of that, which is operationally how do you settle this transaction and then how do you risk manage it once the trade has come in.

Q. Can you specify "this transaction"?

A. The Fed transaction.

The peculiarity of this, and we didn't really understand this at the beginning, but it

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became clear, is, of course, the normal circumstances, a repo transaction shouldn't mean that the lender on the loan is long the underlying risk of the securities collateralizing the loan. They have a secured lending to a borrower that's collateralized.

Here, of course, we knew that we were lending to a borrower that was expected to be bankrupt within a short period of time, and whose parent was bankrupt. Therefore, although it was a loan to a counterparty, at some point we were going to be long the underlying assets.

And if we were long the underlying assets, we therefore needed to risk manage them. Because just because we had assessed that as of the Thursday they were worth some amount, hopefully more than 45 billion dollars, by the Monday, they might have been worth 35 billion dollars.

Q. Right.

A. So we better do something about that. So the focus started to move from how do we manage, how do we even see and book -- how do we book securities that are not just going to be

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collateral for a repo but are effectively going to need to be shadow booked into risk systems so that we can generate appropriate risk metrics so that we can risk manage them. So we -- our process started to change to that.

Q. And this started even before you booked the September 18 --

A. Yes, yes.

Q. -- repo?

A. Yes. Because we had to say how are we going to manage this transaction? How are we going to manage this risk once Barclays has lent -- once Barclays has lent -- in Barclays' book, it is going to have -- the repo desk seems to have lent 45 billion dollars to a counterparty that is going to default, and that is collateralized with a number of securities.

And if it followed its normal process, it would be marking those securities, asking desks, asking price services to -- it wouldn't actually be assuming that it was going to get long the collateral and have to liquidate it.

But here we knew that was going to be the case, and it is mostly the case in other

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distressed -- it is frequently the case, and we have obviously seen this because of what happened with Bear and Bear's hedge funds that had defaulted on repo-secured lending, that the moment the repo -- the borrower defaults under the repo, you seek to liquidate the collateral, and you invariably don't recover enough to cover the loan. You hope you are going to, but markets are distressed at that moment.

Well, this was the mother of all distress. We are in the middle of a bank, a major bank defaulting that many people had thought wouldn't have been left to default, but had defaulted, and we were about to undertake a 45 billion dollar lending in which we would be long this risk with very limited ways of risk managing it.

Q. So what did you do to risk manage it?

A. Well, so Thursday we had to assess how are we going to record in our books securities, when we haven't actually booked the securities, we booked a repo facility. So we had to construct shadow books that were going to represent the risk of the securities that were in the repo facility.



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and then we sought to insure that -- our plan was on the Thursday, each of the desks had a list of the securities that they were expecting to receive, and we had informed them that of course repo is -- this was overnight repo. We weren't but -- a week earlier, by the way, we were not experts in repo. So some of what I am able to talk about now about that repo facility, I actually only learned afterwards.

But this was overnight repo, which meant that strictly speaking the borrower could switch the collateral within the repo facility each night. So we had advised the respective desks, thinking about, you know, in a similar way we categorized the assets that were in the repo facility in a similar way to the way they are categorized on 388-B, and we passed those out to the relevant desks and said tomorrow, you are going to be -- we need you to help us manage this exposure.

And we sent lists to each of the desks. Of course -- but we told them they may marginally change overnight, and until we are certainly long the risk, we can't hedge. We

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couldn't hedge prior because of course if for some reason the transaction hadn't settled, we would be short the market, so there was no way to hedge until we knew that we actually were long the risk.

Q. OK then. There was a lot there, so let me ask a couple of questions.

When you say we were certain we were long the risk, that would be when there was a default?

A. No. Once the securities had settled into Barclays.

Q. Oh.

A. Which would have been the Thursday night, Friday morning.

MR. STERN: You might just explain what you mean when you talk about long the risk and so on.

A. On Thursday, there was -- we knew that there was a Fed facility. Barclays had not lent any money to Lehman. The Fed had lent money to Lehman and collateralized that lending with securities.

Q. Right.

A. That night, Barclays would effectively

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replace the Fed, thereby knowing for certain that it had a secured loan out to Lehman, LBI, where LBI was expected to default.

So it is not until for certain that Barclays has funded that loan that it could say that it definitely is long the risk of the underlying securities.

Q. OK. So if --

A. So for example -- maybe it is easiest by example. If we took a single security on the Thursday, in normal trading, in a normal trading environment, I might be negotiating with a counterparty to buy something and I might be agreeing the price and we might be trading, but -- and I might know that the moment that I want to -- moment that I know I am going to be long the security, I will need to hedge, and I have worked out how I am going to hedge, but until the trader tells me done, not just at some point while we are discussing the price, if I decide to hedge before he says done and then he says, you know what, change my mind, now I have put a hedge on against nothing and I have got to take the hedge off.

So until we know that this repo

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transaction -- this replacement repo transaction has settled, it would be -- it was a trading decision whether or not we should hedge before it settles or after it settles. And we elected to start hedging after it settled.

Q. So when you say settles, that's on Thursday, the 18th?

A. Thursday night into Friday morning.

Q. So that -- OK, I think I understand that.

But aren't you -- I guess I didn't understand the shadow book concept. I thought you weren't long the security until LBI defaults on the Friday.

A. Formally -- exactly right. Until the Friday when there is the default of LBI, then the systems would record a secured lending facility. As I say, some of this, you know, back filling the knowledge because we learned how it really would happen after the fact.

Q. Sure.

A. But that there would be a loan and the repo desk would say, I have got a loan out to LBI and it is collateralized by the following

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securities, but it isn't equipped to hedge or manage those underlying securities because it is not expecting to ever need to. It thinks it has got an overcollateralized loan.

Q. Right.

A. Where it hopes -- where a repo desk risk management ought to be, I've lent you money, I have got some additional margin over and above the amount of money that you have lent, that I have lent you, and if you default, I am going to sell it all as quickly as possible. I am not going to reflect on it and think about whether I would like to -- those are trading decisions for someone else. I am going to sell it.

And hence, when you try to sell something in that way, you would invariably, regardless of whether the last trade observed in the market was 95, if you phone up somebody and say I need a bid, you might get a 85, and that's why they need the margin. But that would be their normal repo risk management decision.

Here we were going into this lending with the benefit of knowledge that within 24 hours to 48 hours, it would be the case that this

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borrower would default, so that there was no value to the counterparty, and furthermore, we were therefore going to be long a humongous number of securities that we would have no ability to sell.

Q. So for that reason you start risk managing those securities the minute the repo settles?

A. First we say -- many of these securities have -- so the -- maybe again it is worth just touching on this for a second.

When I talk about risk, what I mean is that what is the expected change in value of a security with respect to a change in something else. So many of the securities have interest rate sensitivity.

Q. Right.

A. How much would the value of these bonds change if the interest rates went up.

Q. OK.

A. We would also come up with some crude estimates for, say, the equities portfolio, which would be how much of the S&P 500 does this equity portfolio look like. For the RMBS securities we might say how much of a particular mortgage-backed

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index does this portfolio look like.

Because we can't know -- we know there is no way we can sell. If we go out and start selling at 8 a.m. on the Friday morning, five days after the bankruptcy of Lehman, we would recover -- I don't know what we would recover.

And we already knew that where we had seen some of the bids in the market during that week where other people have been selling -- bear in mind, the market was flooded with collateral from the bankrupt Lehman Brothers Holding and LBIE, so that people were closing out other repo facilities. So the market was full of Barclays -- of Lehman's securities that were already being sold. So -- and we were about to get long another 45 billion dollars of them.

So there would be no way for us to manage that. The only way we could do it was bring the risk on to our systems, assess how volatile it was going to be and what parts of that volatility we would have to hedge with instruments in more liquid markets. For example, S&P. For example, interest rate derivatives.

And that's what we started to do on

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the Thursday in anticipation, what systems are we going to need to help manage that and what are we going to do on the Friday. Of course, that was complicated, further complicated by the fact on the Friday morning we woke up to discover we don't own the same portfolio we thought we were going to own a day earlier.

Q. OK. Let me put that issue aside for a minute here. I think I followed you. It is an area that I am not familiar with, so I apologize.

So on Thursday, you are risk managing or hedging the volatility that you foresee in that pool of securities as a result of all this market activity that you have seen? The plan was to hedge the portion you needed to hedge and then sell the securities later?

A. Yeah. So I think the answer to your question is actually no, we were not hedging on the Thursday. We were starting to work out that -- the process up to the decision of will Barclays lend against this pool of assets was one that would incorporate both an assessment of Barclays' assessment, not JP's assessment or Lehman's assessment or anybody else, but Barclays'



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traders' assessment of what was the realizable value of the securities and the amount of -- it would need to have some amount of cushion over and above the amount that it would lend, because the moment that it started to sell, Barclays itself would drive the market down.

Q. Right, right.

A. So we needed to do two things on Wednesday and Thursday. One, an assessment of an estimate of what we thought was a reasonable liquidation value for the portfolio, and then, two, what was a reasonable guess at the risks that we were taking by being long that portfolio. That's what we were doing Thursday.

On Friday then --

MR. STERN: "That portfolio" is the Fed portfolio?

A. For the portfolio we thought we were going to take delivery of, or best guess of the portfolio we thought we were going to take delivery of on the Friday.

But it wasn't until -- and then we made a decision not to hedge on the Thursday. And then on the Friday, once we knew the transaction

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had been consummated, so we knew that we were actually long --

Q. That's Thursday night, Friday morning?

A. So some point Thursday night, somebody would have phoned me and said, Stephen, we are long. So then we knew we had eliminated one risk, which was the execution risk.

Q. Right, right.

A. Because we couldn't -- the reason for not hedging was we could never manage -- never hedge the execution risk.

Q. Right.

A. But on Friday we now know we are long. Let's say that was at 2 o'clock in the morning or something. No markets are open, so there is no way to start selling or to manage -- actually we couldn't start selling because actually it is just a repo facility, it is not that we are long the assets, so you couldn't sell on the Friday.

So therefore, we would have to think up things we could use to hedge the risk. And that's -- we started that process on Thursday. By Friday we started to realize there are securities that we thought we were going to take delivery of

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that we haven't, and there were securities that we have never seen before.

Q. What happens when you -- is that early in the morning Friday?

A. We started to be aware of that early in the morning Friday.

Q. So take me through what happens. I assume you take that to someone's attention?

A. Yes.

Q. What happens in that regard?

A. They say what -- so what do you want to do, Stephen, and we start the process again, which is OK, we have got a list of securities, do we have a complete population -- bear in mind -- the reality is, this was -- there was a tremendous number of people that were involved in this, because this was a -- you know, it had to be a very sensibly and carefully risk managed process. We couldn't eliminate the uncertainty associated with prices, but we ought to be eliminating the uncertainty associated with how we managed the process.

So a lot of people involved, but the Friday morning therefore we just started to do

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again what we had done the day before, how many of the securities do we know? Do we have a complete population? How do we categorize the securities that we haven't seen before, what are they, and actually less what do we think they are worth at that point, because it doesn't matter. More what matters is what are they and how do we manage them, and that's what we did on the Friday.

Q. Can I ask you a question. I think -- tell me if I am wrong. I understood that there was some kind of glitch in transferring the Fed pool of securities to the repo to the tune of about 7 billion dollars, and that Lehman, to make up that shortfall, took a loan and put it into the repo. Is that your understanding?

MR. STERN: Objection to the form.

A. All I know is -- I reiterate the role that we were playing. The role that we were playing is we are not operations people. We are traders and risk managers. Our job was to assess value and then manage the multitude of risks associated with the acquisition of the assets.

I know by construction that there were differences between what we thought we were going

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to be risk managing on the Thursday and what we were actually risk managing on the Friday, and I know that that is -- that there was 7 billion dollars of supposed value, and I think they were using -- I don't know what marks they were using, but 7 billion dollars that had been substituted for cash, which therefore cash doesn't -- nice thing about cash, you don't have to risk manage it, or at least we didn't think so.

Q. I would assume so.

MR. STERN: Turns out you did.

A. Turns out we did. Cash is supposed to be cash.

And then in addition to that -- so there was a -- there were less secure -- rather than -- and I'm using these numbers just to try to indicate population as opposed to the accuracy of the numbers.

So that we had anticipated that at JP marks, that there was a population that JP assessed as being worth 49.7 of securities, that actually that was 42.7. Therefore -- and there was 7 billion of cash.

In addition, though, within the

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securities, they were not the same population. So it wasn't even that it was just a subset of the original population, the Thursday population, it was a subset of the original population plus about 10 billion dollars of stuff that we had never seen before.

Q. That's where I was leading with the question. In other words, the difference that you saw between what you expected and what you received is both in the size of the pool as well as the composition of part of the pool?

A. Correct. There was approximately -- again I am using these numbers, using -- by reference to the JP marks, not my assessment of value or what we were ultimately able to sell them for. There was something like 49 -- we thought that there was going to be something like 49, a population that JP would mark at 49.7. There actually was only about 32 billion dollars of that population was delivered.

Then there was 7 billion of cash or cash that -- you know, cash was cash, and then there was 10 billion dollars, and now -- for which we didn't have any equivalent JP valuations, but

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that once they arrived at BoNY, which was our custodian, BoNY assessed as having marks in total of about 10 billion dollars, and that portfolio we had not seen before.

Q. What did you do with respect to that portfolio and the BoNY ones?

A. The exact same as we had done with all the preceding lists of securities. We tried to assess had we got the entire population.

Bear in mind, the reason we do that, there is no point in risk managing something if it isn't what you actually own. So it has to start with do I really own this. We spent a tremendous amount of time focusing on do I have this, is this a population, categorizing the population, because now all we have got is a list of CUSIPs, so you have to get from CUSIPs to a description of the asset by name, by asset type, then to break it out into asset types, and then to assess what we think its risk is and what its value ought to be.

Q. And so that's a process you started with respect to this 10 billion dollars --

A. On that Friday morning.

Q. -- on that Friday. Did you come to a

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conclusion on that Friday or when?

A. I think one thing that's also worth pointing out, the idea of a conclusion suggests finality. We had -- and I don't think we -- the conclusion probably should be the date on which ultimately it was sold, and stuff took a year to sell.

On that Friday, yes, we did start to think that we had a list of all the securities that were delivered. That took time. And we started to estimate our own -- you know, Barclays' trading desk values for them in -- you know, in the environment that we were in, and the risk.

Q. And did you come to any interim assessments on that Friday?

A. Yes, yes.

Q. What did you assess on that Friday?

A. In relation to -- I don't really remember too much on that Friday about the valuations, because we were very focused on the risk.

Q. OK. Would you have the same answer if I said over the weekend?

A. Yeah. I mean over -- no, over the

| Page 98                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | Page 99                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 weekend, then it started to change. The -- we</p> <p>3 were, you know, reassess -- we -- between there</p> <p>4 and the end of the year, end of the financial</p> <p>5 year, we were constantly reassessing what we</p> <p>6 thought was the value of the securities.</p> <p>7 So you're right, over the weekend we</p> <p>8 started to revert back to what do we think the --</p> <p>9 what number are we going to use as a -- when</p> <p>10 management is asking me, well, Stephen, what did</p> <p>11 we take delivery of, they would like an answer and</p> <p>12 they would like it now, not a better answer in</p> <p>13 three weeks' time. So we had to come up with</p> <p>14 something. But that was a crude response.</p> <p>15 And in some respects it didn't really</p> <p>16 matter to what we were doing, "we" being my desk,</p> <p>17 because what really mattered is, do we have the</p> <p>18 population and what is the risk of it.</p> <p>19 I know that obviously some of the</p> <p>20 valuation work we were doing would then be feeding</p> <p>21 back into the negotiations that other parties were</p> <p>22 having about a deal with Lehman, but it actually</p> <p>23 wasn't very germane to what we ourselves were</p> <p>24 doing.</p> <p>25 Q. I think I understand that.</p> | <p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 You have mentioned two different --</p> <p>3 this is Friday now. You mentioned two different</p> <p>4 sets. One is 32 billion dollars worth of</p> <p>5 securities which had JP marks on them, and the</p> <p>6 other is this 10 billion dollars of securities</p> <p>7 that you had never seen before which had BoNY</p> <p>8 marks on them.</p> <p>9 A. BoNY marks on it.</p> <p>10 Q. Is this assessment that you are doing</p> <p>11 over that weekend primarily focused on the 10</p> <p>12 billion dollar pool?</p> <p>13 A. No, everything.</p> <p>14 Q. Are you coming to some interim</p> <p>15 conclusions during that weekend about the marks?</p> <p>16 A. Yes.</p> <p>17 Q. And what are you finding out that</p> <p>18 weekend?</p> <p>19 A. I don't really -- the one thing that I</p> <p>20 remember is saying that I felt that the cumulative</p> <p>21 amount of securities and cash that we had received</p> <p>22 in an orderly disposal, in not just a fire sale,</p> <p>23 we couldn't just sell -- we couldn't say let's</p> <p>24 sell these over the weekend and then we are done</p> <p>25 by Monday.</p> |
| Page 100                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | Page 101                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| <p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 The -- there was -- the loan was</p> <p>3 adequately collateralized. And that I remember.</p> <p>4 Q. And you told that to your supervisors</p> <p>5 or whoever was asking?</p> <p>6 A. Yes, yeah, yeah. And then on the</p> <p>7 Friday we started to hedge.</p> <p>8 Q. You started to hedge both the 32</p> <p>9 billion pool and the 10 billion?</p> <p>10 A. We didn't differentiate. We really</p> <p>11 didn't start talking too much about what we had</p> <p>12 received. Much of the discussion about what we</p> <p>13 had received versus hadn't received really didn't</p> <p>14 go on until later on.</p> <p>15 We only really cared about what</p> <p>16 would -- you know, the cumulative amount of what</p> <p>17 we had received.</p> <p>18 Q. Later on meaning after the weekend?</p> <p>19 A. Yeah, weeks later.</p> <p>20 Q. So did you have any discussions over</p> <p>21 that weekend with Lehman or did anyone from</p> <p>22 Barclays have discussions with Lehman as to, in</p> <p>23 words or substance, hey, how come we got</p> <p>24 10 billion dollars of securities we weren't</p> <p>25 expecting?</p>                                                                                                                                                                      | <p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 A. I know there were discussions, both</p> <p>3 with JP and Lehman. We weren't -- my desk weren't</p> <p>4 part of those discussions.</p> <p>5 Q. All right. Do you have any</p> <p>6 understanding of what happened in those</p> <p>7 discussions?</p> <p>8 A. In relation to what?</p> <p>9 Q. Well, do you have any -- someone from</p> <p>10 Barclays said words to that effect to Lehman,</p> <p>11 right?</p> <p>12 A. Or to JP. I don't know -- the deck</p> <p>13 securities had come from JP. So why -- so -- all</p> <p>14 we cared about, why have we not got the same</p> <p>15 population that the Fed thought it had the night</p> <p>16 before?</p> <p>17 Q. You are comparing what you got on</p> <p>18 Thursday night and Friday to the population that</p> <p>19 you had spreadsheets about what was previously</p> <p>20 comprised of the Fed pool?</p> <p>21 A. Yes.</p> <p>22 Q. And there was a difference in about</p> <p>23 10 billion dollars worth of those securities?</p> <p>24 A. 17 or so billion, because there is</p> <p>25 some missing, 7, and then the 10, and using those</p>                   |

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2 JP or combination of JP and BoNY numbers. But we  
3 weren't ever part of the conversations about what  
4 had happened and why it had happened.

5 Q. OK. Just so I am clear, you had a  
6 pool of some close to 50 billion dollars of marked  
7 securities for the Fed. What you get on Thursday  
8 night or Friday is about 7 billion in cash,  
9 32 billion with -- that had been in that pool, and  
10 about 10 billion of new securities; is that right?  
11 Am I understanding the groups now?

12 MR. STERN: Can I hear the question,  
13 the question back.

14 MR. HINE: Let me try again. It was a  
15 long convoluted question.

16 Q. You previously had a list or some kind  
17 of data that showed about 50 billion dollars worth  
18 of assets in the Fed pool, correct?

19 MR. STERN: Objection to the form.

20 A. Well, the -- we had a population of  
21 securities which we were expecting to take  
22 delivery of which we understood was supporting a  
23 Fed facility.

24 Q. And that -- I'm just trying to -- I am  
25 drawing a Venn diagram in my head. I want to see

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2 how what you expected to be in the Fed facility  
3 compared to what you ultimately received.

4 A. Right.

5 Q. As I understand your testimony, tell  
6 me if I am wrong, it is about 32 billion dollars  
7 of what you ultimately did receive had previously  
8 been in the Fed facility, to your understanding;  
9 is that right?

10 MR. STERN: Objection to the form.

11 A. Unfortunately what we are having to do  
12 is to use -- because we couldn't -- when we are  
13 talking about the population, we can't describe --  
14 between you and I, we can't discuss CUSIPs and we  
15 can't discuss asset types, so we are ending up  
16 using JP Morgan numbers to describe populations.

17 So I'm just being a little bit  
18 cautious about the fact when you say 32 billion,  
19 that 32 billion dollars is just the sum of the JP  
20 Morgan marks at a particular time.

21 Q. Right, right.

22 A. That was probably a different time to  
23 the time of the 49 billion dollars worth of  
24 JP Morgan prices on securities that we thought to  
25 take delivery of. So I am just being particular

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2 about that.

3 Are we saying that they are of a  
4 population that JP Morgan at some point had marked  
5 at 49.7, I seem to remember, did we take delivery  
6 of a subset of that, using your Venn diagram, that  
7 JP Morgan had assessed at about the time of the  
8 settlement as 32 billion dollars, yes.

9 Q. And in addition, you took delivery of  
10 a pool that BoNY had assessed at about 10 billion  
11 dollars of new securities that were not part of  
12 the Fed pool?

13 A. Yes, yeah.

14 MR. STERN: Objection to the form.  
15 Can I hear the question again.  
16 (Record read)

17 MR. STERN: You can answer that.

18 A. Yeah, I think that's right. I also  
19 don't know -- when I come to think about it, I  
20 don't even know whether the 32 -- I think the 32  
21 that you are referring to probably was -- we had a  
22 list of securities that from a number of days  
23 before we had JP Morgan's -- bear in mind, the  
24 moment that the securities moved from JP as  
25 custodian to BoNY as custodian, they are not

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2 then -- the availability of the marks by the  
3 previous custodian at that moment are not  
4 available.

5 So it may be even that the 32 billion  
6 dollars is actually BoNY as opposed to the  
7 original JP. I think it was the mark -- it was  
8 the sum of the marks that JP had put on the  
9 portfolio the last time JP had provided it.

10 Q. OK.

11 A. Then there was a population of  
12 securities which then BoNY provided, because BoNY  
13 provided custodial marks. We actually used to  
14 call them custodial, although that's a desk  
15 colloquial term. The custodial marks provided by  
16 BoNY on the population we hadn't seen before was  
17 approximately 10 billion dollars.

18 (Exhibit 389-B, document Bates stamped  
19 BCI-EX-S 75200 through 201 marked for  
20 identification, as of this date.)

21 Q. Mr. King, handing you a copy of a  
22 document marked as Exhibit 389-B, which is Bates  
23 stamped BCI-EX-S 00075200 through 201. Please  
24 take a minute, and I will have a few questions  
25 about this.



| Page 110                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | Page 111                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
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| <p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 that means?</p> <p>3 A. Right. So I'm not sure where this --</p> <p>4 this may have actually -- I think -- there were</p> <p>5 two -- you mentioned that there were -- there</p> <p>6 was -- there is sort of multiple tracks that may</p> <p>7 have been going on simultaneously here. We</p> <p>8 were -- my desk was focused on what assets do we</p> <p>9 have, what do we think we can recover from them,</p> <p>10 in valuation, you know, in liquidation valuation,</p> <p>11 and how do we risk manage them.</p> <p>12 There also was a formal process of how</p> <p>13 do we and how do Barclays and Lehman mark the</p> <p>14 books and records, the securities.</p> <p>15 I don't even know whether this was</p> <p>16 something that was Lehman asking Lehman people to</p> <p>17 mark their securities or Barclays asking Lehman</p> <p>18 people to mark their securities or for what</p> <p>19 purpose it was.</p> <p>20 Bear in mind, traders were supposed to</p> <p>21 still be sitting in their seats of a nonbankrupt</p> <p>22 entity on the Friday marking their books. They</p> <p>23 still had a -- they worked for a broker dealer.</p> <p>24 They have long risk positions. They have an</p> <p>25 obligation to mark every day.</p>                                                                                                | <p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 Q. Well, Lehman, LBI declared bankruptcy</p> <p>3 on that Friday, right?</p> <p>4 A. Maybe that was it. Was it on the</p> <p>5 Friday?</p> <p>6 MR. STERN: The 19th?</p> <p>7 A. OK. I don't know. Maybe that was on</p> <p>8 the Thursday -- I don't know the timing of this</p> <p>9 particularly, but the -- presumably there was -- I</p> <p>10 could see that they -- the traders had to mark</p> <p>11 certain things.</p> <p>12 I think this, David's involvement here</p> <p>13 is because we would like to have a mark on what we</p> <p>14 have just taken delivery of, because all we have</p> <p>15 got is a list of securities, and what was clear,</p> <p>16 it is not clear from this e-mail, is that some of</p> <p>17 the securities at the BoNY marks were atrociously</p> <p>18 mismarked. So you need a trader.</p> <p>19 Most price testing functions work</p> <p>20 extremely hard. Price testing functions meaning</p> <p>21 groups. We have a price testing group within</p> <p>22 Barclays. There is a price testing group within</p> <p>23 Lehman. BoNY and JP as custodians need to try to</p> <p>24 come up with prices for thousands and thousands</p> <p>25 and thousands of securities every day. So they</p>                                                                                                      |
| Page 112                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | Page 113                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 have to do it in some kind of batch way. So they</p> <p>3 come up with heuristics by which they mark things,</p> <p>4 because otherwise how could you do it?</p> <p>5 But that's not the same as where a</p> <p>6 trader on a minute, who sat in his seat, talks to</p> <p>7 other traders and says, I would be willing to</p> <p>8 trade. It is supposed to be a pretty good guess,</p> <p>9 but it is never perfect.</p> <p>10 And in between the bankruptcy of LBH</p> <p>11 and bankruptcy of LBI, it was -- you know, it</p> <p>12 is -- the tracking error of that kind of approach</p> <p>13 is bound to be big. So as soon as we have taken</p> <p>14 delivery, it is great -- at least we have got</p> <p>15 BoNY's assessment of where they thought they would</p> <p>16 be willing to advance against -- bear in mind, the</p> <p>17 other thing about the BoNY and JP marks is that</p> <p>18 the Fed was using -- what the Fed does when it</p> <p>19 takes those marks is -- I can't remember the</p> <p>20 advance rates. I learned them later on.</p> <p>21 But when the Fed lends, if you looked,</p> <p>22 went to the Fed's website and looked at the</p> <p>23 advance rates of the securities, what it does is,</p> <p>24 it says, we will assess a value of security at</p> <p>25 some mark that the custodian has provided us, and</p> | <p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 then we will advance less than that as the loan.</p> <p>3 So for example, for mortgage-backed</p> <p>4 securities that might only be 50 percent of the</p> <p>5 supposed mark. So they are not as worried, and in</p> <p>6 normal market conditions that's supposed to be</p> <p>7 fine. They are not actually as worried that they</p> <p>8 have got the mark perfect, because they are only</p> <p>9 lending 50 cents on the dollar, or on equities,</p> <p>10 for example, I think they lend 90 cents on the</p> <p>11 dollar. For agencies maybe they lend 80 cents on</p> <p>12 the dollar.</p> <p>13 So they are saying, I think I have got</p> <p>14 this, I know statistically I must have some error</p> <p>15 on it, but I am only lending 80. Whereas the</p> <p>16 trader when he trades, he is trading there, and he</p> <p>17 is exposed to the first dollar of mispricing, not</p> <p>18 the dollar after the haircut. So they have very</p> <p>19 different tolerances for error.</p> <p>20 So this, on that Friday morning what I</p> <p>21 asked David to do, let's see if we can get an</p> <p>22 assessment as quickly as possible of the -- what</p> <p>23 the things we haven't seen before are worth, and</p> <p>24 it may have been, I don't remember, also the</p> <p>25 stuff, what we long today, worth today, not</p> |

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yesterday, because that also is different.

And what he is highlighting is that there are -- in the first paragraph he highlights that of course the Lehman guys hadn't actually got in their inventory the list of securities that were part of the repo. Because of the intercreditor relationships between the various Lehman Brothers entities, it wasn't necessarily the case that everything that was in the repo facility was also on the Lehman balance sheet, Lehman Brothers, LBI balance sheet.

And in the second paragraph it also has -- there must have been a separate conversation going on. There is a typo in there, actually, but it says, "an orderly liquidation mark." Notice the use of the term "orderly liquidation mark," not liquidation today mark. Because we couldn't -- that would have been 50 cents on -- that would have been who knows, but 20 billion dollars. There just could be no bid. There was no bid for any of this on this date.

And the second is a typo in there. It says "at a bin in comp." That should be "a bid in comp mark." That was presumably supposed to be

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more of an assessment of, you know, if you had to -- if you were willing to buy it today, where would you buy it.

So they are being asked to provide an assessment of both. But that wasn't for us.

Q. "It wasn't for us" meaning --

A. It wasn't for my group. That might have been for Lehman, it might have been for --

Q. So is your group, this whole -- I understand you to be saying that your group was focused on getting the population that we had been provided, at least an accurate assessment of what we got?

A. Yes, yes.

Q. Was there another group focused on how to mark them price-wise? Or how to book them into Lehman's system -- I mean Barclays' system?

A. No. Not -- not that part, but product control -- and -- I'm trying -- I was trying to explain what I do know about this e-mail and about things that happened on the Friday. So hopefully I have answered that question.

Q. Yeah.

A. This feels like a different question.

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which is was there another group that was also marking securities. Is that right?

MR. STERN: I think what Bill wants to know is, who was involved in the booking of the securities and ultimately marking them on the Barclays side.

A. As a formal matter, it is always the trader's responsibility to mark a book. As a practical matter then, there are price testing groups that are within that product control group, PCG function, that have a responsibility to assess whether the traders have marked their books correctly, and they can ask them to revisit their marking and remark them.

Q. OK.

A. That's the logic of the trader and the control function.

Q. OK.

A. So that would have been -- that at some point -- I don't know whether it was happening on the Friday. At some point that would have had to have happened.

In addition, Barclays would have to construct the balance sheet, an acquisition

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balance sheet that represented what it had ultimately purchased by way of this transaction. That again would be a finance -- it is finance's responsibility, not the desk's responsibility, to produce balance sheets.

Therefore, finance would have to make a determination of what it thought was the appropriately price tested valuation for the securities that were acquired on the acquisition date.

Q. OK.

A. That didn't really happen. That happened over a very long period of time. So hopefully that answers that second question.

Q. It does.

The finance function and the preparation of the balance sheet I take it is in the finance department, not in the PMTG department; is that right?

A. That's right. Under normal circumstances, if everything worked well, traders would mark their books. Those marks would be picked up by systems -- the same for Barclays as any other bank. Those marks would be picked up in



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2 transaction, as I said, was not in isolation of  
3 the fact that we were acquiring, you know, other  
4 things.

5 So I never really think of them as  
6 separate. I thought of it as being Barclays is  
7 having to put money out of the door against what I  
8 know is a portfolio of assets that have an  
9 estimated value that hopefully is more than the  
10 loan, but that doesn't look like a very good  
11 trade. So therefore, there has to be other stuff  
12 that's going on.

13 But that's not part of our  
14 responsibility.

15 Q. I guess this is what I am driving at.  
16 You told me before that on that Friday, you  
17 received 10 -- assets marked at 10 billion dollars  
18 that you hadn't expected?

19 A. Yes.

20 Q. Is the additional assets that Lehman  
21 provides over that weekend the result of Barclays'  
22 dissatisfaction with the securities it had been  
23 provided under the repo?

24 A. I don't know. Not to -- no, I  
25 think -- no, not to the best of my knowledge. It

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2 was -- no, not to the -- I think it was another  
3 list -- to us, it was another list of securities  
4 that was part of -- I mean, I think by the Friday,  
5 it must be the case that I had seen the draft of  
6 the asset purchase agreement, so I -- you know, I  
7 knew that there was a list of these securities  
8 that were in this repo facility, but there were  
9 lots of other things that were subject to the  
10 purchase agreement as well.

11 So the fact that from time to time  
12 somebody would ask us, by the way, also there are  
13 these other things that look like things, Stephen,  
14 that you would be able to put an estimate of value  
15 on, and ultimately you will end up risk managing,  
16 that would come to me. Then I would respond to  
17 them, and I would assume that this was part of  
18 something that was a -- the repo transaction was  
19 just a subset of a liability and an asset that  
20 makes up the larger transaction.

21 Obviously later on, I saw the  
22 acquisition balance sheets and things, so I could  
23 see that there were those pieces. So none of that  
24 was a surprise to me. But I wasn't part of the  
25 conversations.

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2 Q. OK, very good.

3 MR. STERN: Should we take a quick  
4 lunch break?

5 MR. HINE: Sure. Let's go off the  
6 record.

7 (Recess)  
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2 AFTERNOON SESSION

3 1:14 p.m.

4 BY MR. HINE:

5 Q. Good afternoon, Mr. King. I wanted to  
6 go over a few documents with you based on some of  
7 the things you have already talked about, but I  
8 did want to start off with two topics.

9 First is the -- you have described how  
10 you received a bunch of assets through Lehman  
11 transactions on Friday, and then later on you  
12 received additional assets.

13 Eventually, these assets get booked  
14 into Barclays' system, and is it correct that  
15 Barclays intended to conduct an orderly  
16 liquidation of those assets over time?

17 A. On the -- it wasn't until later that  
18 we concluded that that's what we would do or how  
19 we would do it.

20 Q. Do you know how much later? Do you  
21 have a time frame in mind?

22 A. Days and weeks and -- days and weeks.

23 Q. Is it fair to say probably sometime  
24 before the end of September of '08?

25 A. We had been -- we had already disposed

| Page 130                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | Page 131                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
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| <p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 of some by the end of September. Prior to the</p> <p>3 19th, it had been -- my expectation and</p> <p>4 understanding was that we would -- there were</p> <p>5 going to be a number of teams that were coming in</p> <p>6 from Lehman that would be integrated with the</p> <p>7 relevant Barclays team.</p> <p>8 There was work that was going on -- it</p> <p>9 was a very fluid environment, very, very fluid</p> <p>10 environment. There was work that was going on in</p> <p>11 the front office trading teams to interview and</p> <p>12 integrate people, and it was our working</p> <p>13 assumption -- this is only really coming into play</p> <p>14 in the middle of that week -- that we would</p> <p>15 facilitate the booking and on boarding of the</p> <p>16 assets, and then we would be pushing them back</p> <p>17 into the relevant trading teams.</p> <p>18 And at various times, the expression,</p> <p>19 you know, well, these are the guys that are going</p> <p>20 to be managing the assets, was used to refer to</p> <p>21 the Lehman people or the Barclays people. They</p> <p>22 would go to a desk.</p> <p>23 As it transpired, as we went through</p> <p>24 the following days and weeks, we started to</p> <p>25 conclude that markets were much, much more broken</p> | <p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 at a very, very fundamental level than we had</p> <p>3 really anticipated. And "we" being I think -- I'm</p> <p>4 not even talking about my group or Barclays, but</p> <p>5 "we" meaning financial markets and the general</p> <p>6 public at large hadn't quite realized how broken</p> <p>7 it was.</p> <p>8 And we, very close to what was</p> <p>9 happening at Lehman, could see that some things</p> <p>10 are irreparably damaged here, and the ability to</p> <p>11 unwind quickly some of these assets is going to be</p> <p>12 very, very difficult.</p> <p>13 And at that point I suggested, and</p> <p>14 this was then subsequently taken up, that rather</p> <p>15 than just push the assets back into the trading</p> <p>16 desks, even with segregated books in the trading</p> <p>17 desks, that we ought to manage them at a more</p> <p>18 coordinated -- in a more coordinated and central</p> <p>19 way and liquidate them in a more orderly fashion.</p> <p>20 But that really was not -- and you may</p> <p>21 remember I said earlier on that my -- our group,</p> <p>22 my group PMTG changed at some point around the</p> <p>23 time. We actually brought additional resources</p> <p>24 into PMTG to facilitate that and took some</p> <p>25 responsibility for liquidating of the assets over</p> |
| Page 132                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | Page 133                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 and above the assets that we were originally</p> <p>3 managing.</p> <p>4 So there was a bit of a change in</p> <p>5 plan, you know. There wasn't much of a plan, but</p> <p>6 the understanding changed over those -- over about</p> <p>7 ten days or so.</p> <p>8 Q. So the assets that you received from</p> <p>9 Lehman in different tranches never were parceled</p> <p>10 out to the trading desks?</p> <p>11 A. They were parceled out -- some of</p> <p>12 them, they were parceled out so that the trading</p> <p>13 desks could originally review them. We further</p> <p>14 refined that to say certain of the assets will be</p> <p>15 parceled out and managed by the respective trading</p> <p>16 desk and some of them won't be.</p> <p>17 So it is a -- it is not as simple and</p> <p>18 straightforward a division as all assets were</p> <p>19 handed down to the respective trading desks. Some</p> <p>20 of them were. Some of them we sold to the</p> <p>21 respective trading desks so they could go out and</p> <p>22 sell them as quickly as possible.</p> <p>23 Otherwise, PMTG retained the risk</p> <p>24 management responsibility but was facilitated by</p> <p>25 the respective trading desk in the liquidation,</p>                                                       | <p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 and others we just kept and managed within our</p> <p>3 group and brought additional resources in to</p> <p>4 facilitate the management.</p> <p>5 So there was three categories.</p> <p>6 Q. When you say facilitate the</p> <p>7 management, meaning your group liquidated --</p> <p>8 A. Managed and liquidated it.</p> <p>9 Q. So has this orderly liquidation now</p> <p>10 been completed?</p> <p>11 A. No. I think also to suggest --</p> <p>12 "orderly liquidation" to me tends to convey -- it</p> <p>13 is a term that's often used when trying to</p> <p>14 describe how -- what type of valuation you would</p> <p>15 attribute to a particular asset. I don't think</p> <p>16 anyone ever used the term "orderly liquidation" to</p> <p>17 describe particularly what we were doing. It was</p> <p>18 liquidation.</p> <p>19 Q. OK, fair enough. I think I was using</p> <p>20 it because I saw it in one of the documents here.</p> <p>21 But you say sometime in September the</p> <p>22 approach changed. Is the approach still to this</p> <p>23 day to liquidate all the assets that were acquired</p> <p>24 by Lehman or just select types of assets or</p> <p>25 categories?</p>                                                                                                                          |

| Page 134                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | Page 135                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
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| <p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 A. It was, it was never -- it was never</p> <p>3 described to me that the intention was to retain</p> <p>4 for longer than was necessary or sensible any of</p> <p>5 the assets.</p> <p>6 Q. So is there a way to assess now,</p> <p>7 several months later, whether Barclays made money</p> <p>8 on this pool of assets it received from Lehman?</p> <p>9 A. We made -- some assets were sold at or</p> <p>10 above their marks, and many of them were sold</p> <p>11 below, and many of them are still there.</p> <p>12 Q. Let me ask it differently. Has</p> <p>13 Barclays undertaken some kind of after-action</p> <p>14 assessment or any kind of assessment or review to</p> <p>15 see if, in fact, they made money on the securities</p> <p>16 and other assets that they acquired from Lehman?</p> <p>17 A. No.</p> <p>18 Q. You have never seen any reports to</p> <p>19 that effect or any kind of spreadsheets to that</p> <p>20 effect?</p> <p>21 A. At various times, at various times,</p> <p>22 more for management reporting purposes I think</p> <p>23 than financial reporting purposes, we, my group or</p> <p>24 Barclays had -- product control has attempted to</p> <p>25 describe how much money was made or lost over a</p>                                                                                                                | <p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 period of time on certain aspects -- certain</p> <p>3 assets.</p> <p>4 A -- I think it was included, I think</p> <p>5 it was included in a footnote to the year-end</p> <p>6 financial statement, is the acquisition balance</p> <p>7 sheet for Lehman. I don't remember whether it was</p> <p>8 actually published or whether I just saw it and it</p> <p>9 was somehow integrated into it. I think it was</p> <p>10 published.</p> <p>11 You know, that report is a negative</p> <p>12 goodwill number, is purportedly a profit of the</p> <p>13 acquisition, but it includes many things that are</p> <p>14 nothing to do with the assets that we have talked</p> <p>15 about here because it includes items such as</p> <p>16 goodwill, real estate, receivables, et cetera.</p> <p>17 So there was -- there is a statement</p> <p>18 there about supposedly some number that is</p> <p>19 attached to the profitability. But I think of</p> <p>20 that as an accounting requirement report for</p> <p>21 financial reporting purposes of the transaction.</p> <p>22 But that describes the valuation of</p> <p>23 the securities according to a set of rules that</p> <p>24 are influenced by accounting guidelines and rules</p> <p>25 on a particular day. And I think the date that</p> |
| Page 136                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | Page 137                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 was picked was the 22nd.</p> <p>3 And a very sophisticated set of rules</p> <p>4 were developed over the subsequent months that</p> <p>5 would guide PWC and Barclays' product control and</p> <p>6 finance to be able to be comfortable that it had</p> <p>7 adequately come up with an asset value for these</p> <p>8 assets and for other things that were -- so</p> <p>9 including certain contingent claims that were</p> <p>10 going to be included on the balance sheet.</p> <p>11 But it doesn't say anything there</p> <p>12 about how much profit or loss was made on those</p> <p>13 assets after that date, and it is an incredibly</p> <p>14 difficult exercise to actually aggregate all of</p> <p>15 that because of the three different places that I</p> <p>16 described to you that the assets ended up.</p> <p>17 Some assets were sold to traders and</p> <p>18 then they subsequently sold them. So there is a</p> <p>19 P&amp;L item, if you like, that turns up in the</p> <p>20 negative goodwill that's on that acquisition</p> <p>21 balance sheet. There is a P&amp;L that we experienced</p> <p>22 between what was the price that PMTG seemed to</p> <p>23 acquire the assets and where it sold them to the</p> <p>24 desks, and then there is another item where the</p> <p>25 desk sold it to the street and there are gains and</p> | <p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 losses on the various hedges, and I'm using that</p> <p>3 word in the way you were using "hedges," the</p> <p>4 various instruments that were used to try to risk</p> <p>5 manage while the assets were in situ in the P&amp;L.</p> <p>6 There is the gains and losses on those.</p> <p>7 So I have never seen a number which</p> <p>8 says how much did we make.</p> <p>9 Q. I think I understand what you are</p> <p>10 saying, but the disclosure that was made in the</p> <p>11 financial statement is a snapshot of the gain on</p> <p>12 acquisition, right? It doesn't even purport to</p> <p>13 cover gains that might have taken place later as</p> <p>14 to those securities?</p> <p>15 A. Or losses, more importantly losses,</p> <p>16 right.</p> <p>17 Q. So my question is, I see the snapshot</p> <p>18 of the gain on acquisition of about 4.2 billion</p> <p>19 dollars. Has Barclays undertaken any efforts</p> <p>20 after that to assess what we are talking about,</p> <p>21 the possibility that it gained or lost on all the</p> <p>22 securities it acquired?</p> <p>23 A. Not in an isolated way. Clearly, all</p> <p>24 those gains and losses are part of the normal P&amp;L</p> <p>25 that all of the desks report, but there isn't a</p>                           |

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2 line item --

3 Q. OK.

4 A. -- that says P&L related to Lehman  
5 securities.

6 Q. I understand that. I was just -- as a  
7 layman, outside the organization, I would think  
8 someone would have said, hey, did we make any  
9 money on that pool of securities we bought last  
10 year?

11 A. There is certainly -- people  
12 frequently asked, but it is not easy to answer  
13 because -- and it is a tremendous amount of work,  
14 so no one bothered to answer it.

15 Q. Just to trace them in all the places  
16 they went?

17 A. Trace them, and there were some  
18 aspects of it that had to be done so there was  
19 adequate reporting in trading statements and  
20 year-end statements and things, but -- and I don't  
21 think it is ever, you know, that -- the  
22 acquisition gain that you are referring to doesn't  
23 ascribe gains or losses on the securities. It  
24 just talks about on everything that was subject  
25 to -- was either -- just the difference between

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2 the assumed assets and liabilities of the  
3 transaction.

4 Q. Were you involved in helping provide  
5 information that would go into the assessment of  
6 that initial gain on acquisition?

7 A. Yeah, once again we could -- the  
8 estimated values for the securities was provided  
9 by my desk to finance.

10 Q. And you mentioned some stringent rules  
11 that were applied in that regard?

12 A. That's somewhat after the fact. As I  
13 described it, you know, it is not exactly a  
14 normal -- as much as possible Barclays, given the  
15 environment we were in, was attempting to follow  
16 as many of the normal rules and procedures that it  
17 would do for an acquisition, even though this one  
18 was obviously extremely large.

19 So, you know, initial estimates of  
20 what that balance sheet would have looked like  
21 were on -- in relation to the securities, were  
22 derived from my desk's estimates, where they were  
23 available, of the values for the securities.

24 With time, obviously the individual  
25 desks that were receiving the assets marked the

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2 assets. I don't think we -- I don't think we ever  
3 went back to remark -- we didn't really -- my desk  
4 didn't really care very much about what the mark  
5 was on the 19th in many respects. We cared about  
6 what it was for a certain date that we took a  
7 snapshot, so that we could report day two P&L, or  
8 day one P&L, day two P&L, day two P&L being  
9 everything after -- all the P&L associated with  
10 the assets after they have been booked.

11 So we cared about a particular  
12 snapshot, and I think we took a number that was  
13 closer to -- a date that was closer to the end of  
14 the month for that purpose. End of September.  
15 And then we looked at P&L changes from that date  
16 on individual line items. Not aggregate but just  
17 individual line items.

18 Q. That was your best estimate at the  
19 time --

20 A. At that time, and then that continued  
21 to be refined as we found out more about the  
22 securities or passed them out to the respective  
23 desks or sold them or what have you.

24 Q. Sure. But for financial reporting  
25 purposes, that was your best estimate at that

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2 time?

3 A. That was the best estimate. We  
4 provided the best estimate, and then product  
5 control started to -- as things started to  
6 stabilize, product control took over its normal  
7 process about starting to think about how it would  
8 prepare its financial statements, and then  
9 therefore, obviously our information was an input  
10 to that, but it was only an input, and they used  
11 multiple sources, I think, to construct the  
12 assumed valuations for the 19th.

13 (Exhibit 390-B, document Bates stamped  
14 BCI-EX-S 52667 through 68 with attachment  
15 marked for identification, as of this date.)

16 Q. Mr. King, handing you a copy of a  
17 document marked as Exhibit 390-B, which has Bates  
18 ranges BCI-EX-S 00052667 through 668, and then  
19 there is an attachment which is produced in native  
20 form which we have attached to the exhibit.

21 It is a Monday, September 22nd e-mail  
22 entitled "Long Island Draft Balance Sheet/Goodwill  
23 Calc." Do you see that?

24 A. Um-hm.

25 Q. After you have had a moment to review



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2 it, I would like to ask you a question about it.

3 MR. STERN: Have you read the e-mail?

4 THE WITNESS: Yeah, I will come back  
5 to that in one second.

6 A. Yes.

7 Q. My question is, do you see the entry  
8 on the first covering e-mail -- I understand that  
9 you are not a party to that e-mail, but it is  
10 discussing the acquisition balance sheet, and the  
11 fourth bullet down refers to the "2.83B valuation  
12 adjustment is S. King's first cut only." Do you  
13 see that?

14 A. Yes.

15 Q. And if we refer to the last page of  
16 the document, I see an entry for 2.83 billion. Do  
17 you know what -- is that the 2.83 adjustment,  
18 first-cut adjustment that the e-mail is talking  
19 about?

20 A. Yes.

21 Q. Do you know what -- can you explain to  
22 me what that valuation adjustment is?

23 A. Yes. It is linked to your previous  
24 questions. There has to be -- and this changed  
25 over time. There has to be -- this concept, and

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2 we have touched on it a few times during the --  
3 through the course of the conversations, of there  
4 being a value, a valuation, seems to imply that  
5 there is a single price, but of course that isn't  
6 actually the case.

7 When you are referring to orderly  
8 liquidation -- for example, I think the e-mail  
9 that we had in front of us earlier was that the  
10 CMO guys told me he was told to give two months  
11 orderly liquidation in the bid in comp. So there  
12 he has used -- you can see he is being given an  
13 instruction. That is actually a quite formal  
14 instruction.

15 An orderly liquidation mark is  
16 something that people understand to mean -- that  
17 was on Exhibit 389-B. That was something that  
18 people sort of understand to mean if there is --  
19 sometimes we come into work in the mornings and we  
20 get a phone call saying, will you bid on the  
21 following. And if we have got enough capital and  
22 we feel like doing it, then we may say yes, and  
23 the guy may want to sell us the stuff for  
24 30 million dollars and we may bid 10. And if he  
25 really needs a bid, then he will hit our 10.

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2 I wouldn't describe that as an orderly  
3 liquidation. And in fact, we have seen a lot of  
4 that during the course of the last two years, of  
5 course, as so many counterparties have defaulted  
6 on obligations and their assets have been seized  
7 and liquidated.

8 Under normal circumstances it is not a  
9 straightforward process. In marking our books, we  
10 have to try to assess whether or not we are  
11 supposed to use those pricing points in marking  
12 assets.

13 They are clearly actually where  
14 something just traded. Something was sold from  
15 one party to another party at that price.  
16 Somebody was willing to trade. But they weren't  
17 really willing to trade -- it wasn't particularly  
18 by design that they traded there, they had to  
19 trade, it was sold. Maybe it was seized and sold  
20 or they needed to sell it to create liquidity, but  
21 it wasn't exactly orderly.

22 So on that page 389-B, where it says  
23 "orderly liquidation mark and bidding comp,"  
24 that's kind of -- it's trying to highlight there  
25 really is a little bit of a difference between the

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2 two of those.

3 We mostly mark our positions as if  
4 there was an orderly disposal. Not necessarily  
5 that that's what we plan on doing with them. We  
6 might hold them, might sell them. There is lots  
7 of things we try to do, but we try to keep that  
8 concept in mind.

9 At this stage, on Monday, the 22nd,  
10 this balance sheet, the valuation adjustment was  
11 equal to the difference between -- I think it was  
12 the 45 point -- Thursday close. The  
13 45.18 billion, which is the Thursday -- this is  
14 the inventory Thursday close, 45.18. That would  
15 have been, if memory serves, the BoNY marks for  
16 the portfolio.

17 And -- there is a little bit of P&L in  
18 here. I think that is probably carried, and then  
19 the valuation adjustment on this day, this isn't  
20 necessarily on subsequent balance sheets, but on  
21 this day would be equal to the difference between  
22 the BoNY -- I think the BoNY marks and our current  
23 best guess, based on everything that we have got  
24 available to us, of the orderly liquidation mark.

25 So it is trying to get from one number

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
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| <p style="text-align: right;">Page 146</p> <p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 to another number. With time, both of those, the</p> <p>3 definitions of those were clarified, but that was</p> <p>4 what this was on that date, and that's why Gary</p> <p>5 refers to it as valuation adjustment, as S. King's</p> <p>6 first cut only.</p> <p>7 It is not an upper-case term,</p> <p>8 valuation adjustment. It was just a term that we</p> <p>9 started to use to be the difference between where</p> <p>10 there was some observable marks that could have</p> <p>11 been the BoNY marks and where we were saying we</p> <p>12 would probably book things. Again, it was to try</p> <p>13 to make the difference between the day one and day</p> <p>14 two P&amp;L.</p> <p>15 Q. This is Monday, the 22nd. That's the</p> <p>16 date on which the financial statement ultimately</p> <p>17 says, let's report the acquisition as of on that</p> <p>18 date, right?</p> <p>19 A. Yes.</p> <p>20 Q. If you look at 5, I don't know if that</p> <p>21 helps in your answer. I'm not sure you saw that.</p> <p>22 A. OK.</p> <p>23 Q. So that confirms that the --</p> <p>24 A. That's actually -- so we put that --</p> <p>25 it is in there, initial estimate of the adjustment</p>    | <p style="text-align: right;">Page 147</p> <p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 to Barclays' marks, BoNY prices and Barclays'</p> <p>3 marks. That's precisely that.</p> <p>4 Q. The BoNY price of 45 billion is the</p> <p>5 BoNY marks assessed on what pool of assets?</p> <p>6 A. What is -- I don't know if this is</p> <p>7 clear on this. It is just inventory on this day.</p> <p>8 Q. Maybe I could ask a clarifying</p> <p>9 question while you look at that.</p> <p>10 Is the 45 -- my question is, is the</p> <p>11 45.18 the BoNY marks for the assets you received</p> <p>12 from the repo, or does it also include other</p> <p>13 assets that you received later?</p> <p>14 A. That's what I was just trying to</p> <p>15 check. There is a version of this where they are</p> <p>16 separated. But I don't think we were able to do</p> <p>17 that as early as the 22nd.</p> <p>18 Q. That's the Monday following.</p> <p>19 A. Yeah. Because I can only see one --</p> <p>20 45.18 inventory, 15c3, financial assets.</p> <p>21 Yes, I think it is 45.18. It is just</p> <p>22 whatever we -- at this point whatever we knew of.</p> <p>23 Q. If you read further down on that</p> <p>24 column, you will see a reference to 15c3 assets,</p> <p>25 so that's a separate asset that you received over</p>                                                                                   |
| <p style="text-align: right;">Page 148</p> <p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 that weekend, correct?</p> <p>3 MR. STERN: Objection to the form.</p> <p>4 Q. If you can describe that, that's fine.</p> <p>5 A. On the 22nd, I wouldn't even have</p> <p>6 known what 15c3 meant, and 15c3 asset wasn't -- is</p> <p>7 not a security or anything that we -- it is just a</p> <p>8 line item on here. It is not an asset -- it is</p> <p>9 not a tradable asset.</p> <p>10 Q. OK. And the 7 billion in cash, is</p> <p>11 that the -- in the next, next line item, 7 billion</p> <p>12 in cash, is that the 7 billion that came over to</p> <p>13 Barclays as a result of the repo transaction?</p> <p>14 MR. STERN: Objection to the form.</p> <p>15 You can answer.</p> <p>16 A. The cash, the 7 billion was the cash</p> <p>17 item on here. Actually, I have seen -- obviously</p> <p>18 I've seen this before and various subsequent</p> <p>19 iterations of it. But we didn't prepare this.</p> <p>20 So --</p> <p>21 Q. "We" meaning --</p> <p>22 A. My desk. So we didn't have any input</p> <p>23 to anything that was -- you know, we would provide</p> <p>24 Gary numbers, and we wouldn't have had any input</p> <p>25 below inventory, because they are not securities.</p> | <p style="text-align: right;">Page 149</p> <p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 Now, the 7 billion dollars is the</p> <p>3 cash, but I know that the 7 billion dollars is the</p> <p>4 cash that we thought we had in relation to the</p> <p>5 nonsecurity-based collateral for the repo</p> <p>6 facility.</p> <p>7 Q. If I look on here, I don't see --</p> <p>8 well, could you tell me if there is any entry on</p> <p>9 here that covers what we have been calling</p> <p>10 unencumbered assets or the clearance box assets,</p> <p>11 or have they not yet come over to Barclays?</p> <p>12 A. I -- as I say, there must be a hundred</p> <p>13 of these balance sheets that were, you know, as</p> <p>14 product control refined them. I don't know how</p> <p>15 many I have seen, but I've seen a few of them</p> <p>16 between here and the end of the year. This is an</p> <p>17 early version of it. And so you will have to</p> <p>18 forgive me if I can't remember exactly the 45.18.</p> <p>19 Inventory on the Friday morning, I</p> <p>20 think from memory, is everything that we thought</p> <p>21 we received at the -- by the date of -- by some</p> <p>22 date on which we provided -- I don't know what</p> <p>23 date -- I don't know what date Gary is producing</p> <p>24 this, so it might have been this is from the</p> <p>25 Friday numbers or Saturday numbers or Sunday</p> |



| Page 150                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | Page 151                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 numbers. It is probably not the Monday numbers,</p> <p>3 because it is produced on Monday. I suppose it is</p> <p>4 produced late on Monday.</p> <p>5 But it doesn't separate out the</p> <p>6 unencumbered assets that we had already received</p> <p>7 by that point. It doesn't separate it out. So I</p> <p>8 think that everything that we had received to this</p> <p>9 point was in that number.</p> <p>10 Q. Back to the 2.83 valuation adjustment.</p> <p>11 How did you come up with that 2.83 number? Is</p> <p>12 that the top-down analysis we talked about</p> <p>13 earlier?</p> <p>14 A. No. We never came up, so we, my group</p> <p>15 never came up with 2.83. 2.83 is a difference</p> <p>16 between a set of marks and our marks. So it is</p> <p>17 not like I come up with -- it is not that I come</p> <p>18 up with 2.83. We would come up with on here 42.55</p> <p>19 as a -- on the spreadsheet or the inventory, and</p> <p>20 say we've marked all the individual line items,</p> <p>21 and then product control will tell us at that --</p> <p>22 based on all your individual marks or your best</p> <p>23 estimate here -- I think by this date we were</p> <p>24 still working on spreadsheets -- we estimate that</p> <p>25 what we have got is worth 42 and a half billion</p>                             | <p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 dollars.</p> <p>3 Then they would compare that to the</p> <p>4 marks for some of the inventory at the BoNY marks,</p> <p>5 and that's what that last paragraph says. It said</p> <p>6 the trades are initially booked at BoNY prices, so</p> <p>7 no one is calculating the 2.83. The 2.83 is the</p> <p>8 difference between the BoNY marks and the desk</p> <p>9 marks.</p> <p>10 Q. And the desk marks are -- Barclays is</p> <p>11 going CUSIP by CUSIP and putting a mark in for --</p> <p>12 A. Where possible, yes. Where possible.</p> <p>13 And it is the best guess by the desk, by my desk</p> <p>14 using input from as many other sources as we</p> <p>15 possibly can of an orderly liquidation mark, not</p> <p>16 where we would -- if we were to -- if we had</p> <p>17 turned around and asked somebody to bid on this</p> <p>18 day for 42 and a half billion dollars worth of</p> <p>19 securities, it would have been 30-something</p> <p>20 billion.</p> <p>21 Q. I understand that. I'm just trying to</p> <p>22 understand the origin of the marks that Barclays</p> <p>23 put on it. Did Barclays adopt marks that Lehman</p> <p>24 had put on these assets?</p> <p>25 A. No.</p>                                                                                                                                                      |
| Page 152                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | Page 153                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 Q. I have heard testimony in other</p> <p>3 instances where Lehman valued those assets at</p> <p>4 42.9. This appears to be very close to the</p> <p>5 Barclays marks. Did you have any consideration or</p> <p>6 discussion between Lehman and Barclays as to their</p> <p>7 own marks?</p> <p>8 A. Well, some of the marks were -- we</p> <p>9 actually used to make the unfunny joke that 42 and</p> <p>10 a half versus 49, you know, or 50 versus 48 and a</p> <p>11 half, it is kind of close. It is -- that's half</p> <p>12 of a billion dollars, so that's a gap. That's</p> <p>13 500 million dollars of, you know, rounding.</p> <p>14 And that would have come from more of</p> <p>15 a -- it just sort of highlights just how much</p> <p>16 uncertainty there was. You would be very</p> <p>17 surprised if there was absolutely no relationship</p> <p>18 between the BoNY marks, the JP marks, the Lehman</p> <p>19 marks, the Barclays estimates. If they weren't of</p> <p>20 some similar order of magnitude, you know you have</p> <p>21 a major failing of a control system somewhere.</p> <p>22 But still, I don't -- we never really</p> <p>23 needed to use the Lehman marks, other than -- the</p> <p>24 only place where we used the Lehman marks was</p> <p>25 where we had no idea what the security was other</p> | <p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 than a CUSIP, some generic name, and the Lehman</p> <p>3 mark, then we would have said we will value it at</p> <p>4 a discount to the Lehman mark because we have</p> <p>5 nothing else to go on. It could be worth nothing.</p> <p>6 Many of them were worth nothing. Not</p> <p>7 because Lehman had -- bear in mind, the Lehman</p> <p>8 marks were from days -- they were old, they were</p> <p>9 what we call stale. Many of them were -- I think</p> <p>10 most of the stuff we were looking at earlier was</p> <p>11 on the 12th, which was before the bankruptcy of</p> <p>12 Lehman Brothers Holdings, and even during that</p> <p>13 previous week, most of the traders were out -- at</p> <p>14 Lehman were more worried about their own futures</p> <p>15 than necessarily marking their books, and markets</p> <p>16 were already very, very distressed.</p> <p>17 So the idea that those markets were</p> <p>18 good on -- those marks were good on the 22nd after</p> <p>19 two bankruptcies and Merrill being acquired by --</p> <p>20 or being bailed out, is -- there is a</p> <p>21 tremendous -- you know, the value of them is</p> <p>22 that -- so there were cases where we said -- and</p> <p>23 some of them were appropriately marked by Lehman</p> <p>24 but worthless to Barclays.</p> <p>25 A good example would be there were</p> |

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2 warrants that were in the repo facility, I  
3 remember roughly it was 300 million dollars as a  
4 good example. 300 million dollars issued by  
5 Lehman referencing other credits.

6 Now, those, as long as Lehman exists,  
7 are worth roughly the amount of the reference  
8 credit, but the moment that Lehman defaults, they  
9 are worthless. So Lehman had them appropriately  
10 marked where they would have traded them prior to  
11 Lehman's insolvency. They are just called fixed  
12 income security on a schedule that we had, and  
13 they are actually worthless, and there were  
14 instruments like that in the repo facility.

15 Now, we wouldn't have known that until  
16 days, many days later.

17 Q. So this 2.83 adjustment is derived  
18 from comparing the BoNY marks to Barclays' own  
19 marks?

20 A. PMTG's current best guess at an  
21 orderly liquidation.

22 Q. At that particular date?

23 A. On that particular date. It doesn't  
24 say if the other bidding -- you know, that's an  
25 orderly liquidation as opposed to a bidding comp

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2 liquidation.

3 MR. STERN: Should we take a short  
4 break?

5 THE WITNESS: Sure.

6 (Recess)

7 BY MR. HINE:

8 Q. Mr. King, I am going to hand you a  
9 copy of a document marked as Exhibit 86-B. After  
10 you have had a minute to look at it, I would then  
11 like to ask you a couple of questions, first  
12 regarding whether you have ever seen this document  
13 before.

14 MR. STERN: Take your time and look at  
15 it, and that's the question: Have you ever  
16 seen it before?

17 THE WITNESS: OK.

18 Q. Have you ever seen this document  
19 before, Mr. King?

20 A. I've never seen the document before.  
21 I don't think I have seen the spreadsheet before.

22 Q. Does it look like anything else you  
23 have seen before?

24 A. Unfortunately, it looks like a  
25 tremendous number of things I have seen before,

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2 but I don't think I have -- I don't know -- I  
3 don't really recognize this one.

4 Q. Do you have any understanding or can  
5 you give me your best -- withdrawn.

6 Do you have any understanding of what  
7 this document is modeling?

8 MR. STERN: Objection to the form.

9 Calls for speculation.

10 Q. Attempting to model?

11 MR. STERN: You are asking for him to  
12 guess or --

13 MR. HINE: Yeah.

14 MR. STERN: I object to guessing.

15 Q. You can answer the question.

16 A. Well, it describes PMTG and it -- and  
17 the cumulative amounts are the same as the sheet  
18 we looked at before. Slightly different. So it  
19 looks like -- it looks like many reports that were  
20 produced around this time that are of a population  
21 of securities that in some way are linked back to  
22 that, but I don't know this -- especially not  
23 with -- without any date or anything on it, it is  
24 just one of any number of spreadsheets.

25 Q. Do you know -- can you tell by looking

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2 at it, the form, who, which department within  
3 Barclays might have prepared this?

4 A. Only by the fact that it talks about  
5 PCG values, as well as PMTG, and -- I would think  
6 it is a -- well, it is a reconciliation of  
7 something with something, and it looks -- it  
8 clearly has a similar set of securities as the  
9 previous -- as 39-B, I think it is, but what it  
10 was trying to achieve or who prepared it -- it  
11 could be either our desk or PCG. It would have to  
12 be one of the two.

13 Q. Have you ever heard of anything  
14 referred to as PCG liquidity value?

15 A. Isn't that just --

16 Q. That's the column heading for column  
17 F. Do you see that?

18 A. Isn't that just D minus E?

19 Q. It very well could be. I'm curious if  
20 you ever heard the term used, "PCG liquidity  
21 value."

22 A. No.

23 Q. Is that -- do you see the column  
24 marked E which says "MV09/22 with bid-offer"? Do  
25 you see that column?

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2 A. Yes.  
3 Q. Did your department undertake any  
4 efforts to, on or around 9/22, to solicit bids or  
5 offers for these types of securities?  
6 A. No.  
7 Q. Did you have any idea of where that,  
8 the entries in that column would have come from?  
9 MR. STERN: Objection to the form.  
10 You can answer.  
11 A. I -- I would -- I am -- I would be  
12 very surprised if column E -- column E, market  
13 value 09/22 with bid offer, is a term that we in  
14 PMTG -- those could be -- they could have come  
15 from PMTG. They might have come from an aggregate  
16 of other places.  
17 I would think they came from PMTG, and  
18 as far as I can see, F is just D minus E.  
19 Q. OK. Do you see on the left-hand  
20 column there appears to be a list of various  
21 categories of securities? Do you see that?  
22 A. Yeah.  
23 Q. Below that, PMTG and then another  
24 entry for PMTG2. Are those -- other than being  
25 the initials for your department, would you --

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2 whole document, I just want to ask you about the  
3 cover e-mail. But take your time to review  
4 whatever you need to review.  
5 It appears. This is dated Wednesday,  
6 the 17th. It appears that you are providing  
7 comments to the asset purchase agreement; is that  
8 correct?  
9 MR. STERN: Objection to the form.  
10 Q. Let me rephrase.  
11 What is this covering e-mail?  
12 A. It is an e-mail from me to Patrick,  
13 Mike and Jonathan. It is called asset purchase  
14 agreement comments. And those are comments to the  
15 asset purchase agreement that I would have  
16 provided to them.  
17 Q. OK. Do you recall providing comments  
18 to the asset purchase agreement?  
19 A. I now do. But I would have forgotten  
20 about it otherwise.  
21 Q. OK. I guess my first question: The  
22 agreement is signed on the 16th, so why are you  
23 providing comments the day after it is signed?  
24 A. I don't know. On that, I -- don't  
25 forget, to me, I then didn't know -- until you

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2 could you -- do you have any idea what securities  
3 are being pooled in those entries?  
4 MR. STERN: Objection to the form.  
5 A. No. I mean over there -- you say this  
6 is on the 22nd?  
7 Q. I don't have a date for it. I see the  
8 entry -- well, the title at the top appears to be  
9 22 September.  
10 A. Oh.  
11 MR. STERN: The question is, do you  
12 have any idea what securities are being  
13 pooled in those entries. That's the  
14 question.  
15 A. 1.17 billion. I think. I would just  
16 be guessing.  
17 Q. Don't know?  
18 A. No. I mean I would be guessing rather  
19 than I know.  
20 Q. OK. Mr. King, I would like to walk  
21 through a couple of documents here just to ask you  
22 some specific questions of those documents.  
23 The first one, I am going to hand you  
24 what was previously marked as Exhibit 302-A. It  
25 is very thick. I don't want to ask you about the

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2 told me earlier today that there was an agreement  
3 signed on the Tuesday, I didn't know that. Or at  
4 least I certainly didn't remember it.  
5 Q. Why would you be sending these  
6 agreements to Mr. -- these comments to Mr. Cox?  
7 Do you recall?  
8 A. No.  
9 Q. Do you see in the first entry it talks  
10 about purchase assets, and the third sentence in  
11 that entry, entry number one, says, "Can  
12 securities be sold to LBI without approval at a  
13 discount to current mark?" Do you see that?  
14 A. Yeah.  
15 Q. Do you recall why you were making that  
16 comment?  
17 A. No, though reading it in its entirety,  
18 it also says, "Are hedges put on by LBI after the  
19 agreement is signed included? Any limits or  
20 restrictions?"  
21 So on the 17th, you know, on the 17th  
22 is before we got into the repo. This is the --  
23 these are -- these are commenting on something  
24 before we actually -- not on the final form of the  
25 transaction.

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Q. Now, when it says discount, do you recall any discussions or having any understanding at the time that Barclays was acquiring assets from Lehman at a discount?

MR. STERN: Objection to the form.

Asked and answered.

A. I wasn't -- can you repeat that actually.

(Record read)

A. As I pointed out before, I wasn't party to any of those discussions.

I would have to also question discounts to what. If it is a discount to BoNY's marks or something, then I would say I was assuming that my desk was viewing the assets as not being worth the BoNY marks, but I don't know if that's what you mean by discount.

Q. I'm just trying to exhaust your recollection on discussions you might have heard or understandings you might have heard about the discussions between Barclays and Lehman.

MR. STERN: Your question? I don't think there is a question.

Q. So let's reread the question. Do you

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recall any discussions or having any understanding at the time that Barclays was acquiring assets from Lehman at a discount?

A. So I wasn't party to the discussions -- to any discussions, but I didn't think that -- if I -- I would have to define discount to what, and then if I -- if you said -- if you had asked me the question did I think that the -- we should pay less than where Lehman had marked the securities on the 12th or where BoNY or JP had marked them on the 17th, then I would say yes. But I don't know whether that's what you are asking.

Q. I understand your answer. I was asking if you have any knowledge of the discussions between Lehman and Barclays --

A. No.

Q. -- as to that subject?

A. No.

Q. Can we skip ahead to the repo transaction, which is the September 18 repo.

A. Yeah.

Q. Did Barclays provide a list of assets that it wanted excluded from the repo or would not

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accept as collateral in the repo?

A. No. We didn't have any option on the -- going into the -- we weren't -- "we" being PMTG, weren't aware of any flexibility as to what we were going to receive. That was part of the problem, was we are going to take delivery of -- remember you asked me the questions earlier about what were you looking at, Steve, and I was provided an inventory of securities on the Wednesday, Thursday, that represented what I would take delivery of.

And then it did happen to change by Friday, but that was not what we were expecting to receive, that list of securities.

Q. I am talking about before the Friday. I'm talking about in the Wednesday, Tuesday, whenever you are talking about the repo, were there certain assets that Barclays would not accept as collateral for that repo?

A. No. I -- on the Wednesday -- so the Wednesday or Thursday we are analyzing the repo, we just assumed we were taking delivery of whatever was described to us as being in the repo on the Thursday.

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Q. Described to you by who?

A. In the schedule of securities provided -- you asked me the question earlier as to -- about a list of securities that was in the repo, and I answered that I didn't know where it came from, whether it was from operations or the Fed or whoever, but somebody provided us a list of securities on the Thursday, which is the list we thought we would take delivery of. It wasn't the list that we ultimately took delivery of, but it was the list that we passed out to the various traders.

We didn't think that we had any option to pick and choose.

MR. STERN: Is that the list that you referred to as having an hour and a half to look at?

THE WITNESS: The hour and a half to look at, yes.

Q. This might clarify the question. I am going to hand you a document that was previously marked as 143-B. It is an e-mail stream of which you are not a party to until you get to page 2.

MR. STERN: Take a look at the whole



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thing.

Q. You can look at the whole thing. I am just directing your attention to an entry on page 2, which is an e-mail from you to David Petrie, and it attaches something called excluded mortgage assets.

A. Right.

Q. So take your time to look at the document, but my questions are going to be primarily about that attachment.

A. OK.

Q. Have you ever seen this document before?

A. Yes.

Q. Can you tell me what the attachment which is titled "Excluded Mortgage Assets 9/17/08" is?

A. Yeah. It is from the 6.5 billion dollars of assets on the -- let me look here.

Q. Is that the exhibit we first used in this --

A. Yeah, I think so.

Q. I think it is --

A. 388-B.

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Q. The 6.6 billion in mortgage?

A. Yeah. So once upon a time in the first part of the week, we had suggested that we wouldn't -- remember I said that we wouldn't take all of the mortgage and mortgage-backed total. So we divided it into two pools, the included and the excluded.

So that e-mail from the 17th, unless I have made a mistake, it is an e-mail about the assets that we wouldn't be taking out of the mortgage and mortgage-backed securities.

Q. So these are mortgages you are not going to take?

A. These would be -- yes, that's the -- well, it was -- in the early part of the week it was the list of securities which we were suggesting that we wouldn't take, "we" being my group, suggesting that we would rather not take out of the total mortgage and mortgage-backed total.

Q. It is really nothing to do with the repo. It has to do with the agreement to only take a portion of the mortgage-related securities?

A. That's correct.

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Q. And then that agreement eventually changes toward the end of the week?

MR. STERN: Objection to the form.

A. As I have said, I only know that what we were looking at at the beginning of the week didn't end up being the transaction. I don't know how the agreement changed.

Q. Let's talk about mortgage, the pool of mortgages-related securities itself. What happened to that? Did Barclays end up getting those securities?

A. Some of them, because some of them were in the repo, but not all of them were in the repo.

Q. And is the part that was in the repo the securities that did not make it to this schedule?

A. I think I described --

MR. STERN: Let me hear that question again, please.

MR. HINE: Let me try again. That was confusing.

Q. You talked about this schedule, and I am talking about Exhibit --

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MR. STERN: 143-B.

Q. 143 -- all right, 143-B, that's the schedule of mortgage-related securities that --

A. Correct.

Q. -- Barclays did not want included in the transaction, correct?

A. Right.

Q. And that was -- the counterpart to that is the securities that Barclays would allow in the transaction, right?

MR. STERN: Objection to the form.

A. I'm not sure what we mean by -- if we mean what we understood at the beginning of the week my group was asked to assess as a portfolio of assets that would end up being part of the purchase agreement, then this pertains to that. What ultimately happened was of course completely different.

Q. Well, that's what I am asking. What ultimately happened to the pool of mortgage-backed securities?

A. Some of them I don't know, because the 388-B balance sheet was -- was not completely -- you know, it -- what does he have, 65.1 -- it says

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2 65.16 billion dollars. That's on 388-B again,  
3 65.16 billion.

4 So it is bigger than -- that number is  
5 bigger than the repo facility which at any one of  
6 the various marks that people had put on was less  
7 than 50 billion dollars.

8 So not -- using your Venn diagram, not  
9 all of these securities are in the repo facility.

10 MR. STERN: And you're pointing to  
11 388-B.

12 THE WITNESS: I'm pointing to 388-B.

13 Q. I'm just trying to chase what happens  
14 to the pool of mortgage-backed securities that  
15 were originally marked as 60 billion on 388-B,  
16 what happens to them by the end of the week?

17 A. I don't know on all of them. All I  
18 know is some of them were in the list -- some of  
19 them -- some of them were collateral that was  
20 pledged to the Fed as far as my desk knew on the  
21 Thursday, Wednesday, Thursday.

22 Q. The Fed?

23 A. Yeah. Some of them were in the Fed  
24 facility. Every single -- a bank -- I mean every  
25 single -- a balance sheet is made up of assets and

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2 liabilities. Some of them -- all assets have to  
3 be financed, especially for a broker dealer like  
4 Lehman. So, many of these assets were financed by  
5 the Fed. Therefore, they would have also been in  
6 the Fed facility.

7 Q. Right.

8 A. But there is 65 billion of assets  
9 here, so they couldn't all fit in the Fed  
10 facility, which was only 50 billion.

11 Q. I understand.

12 A. Some of them weren't even in what we  
13 thought was the Fed facility on the Wednesday,  
14 Thursday.

15 Q. OK.

16 A. So some of them were just gone.

17 MR. STERN: But he is asking you about  
18 Exhibit -- the list on Exhibit 143-B.

19 THE WITNESS: Yeah.

20 MR. STERN: What happened to those.

21 Q. No, I am asking the pool of securities  
22 on 388-B --

23 MR. STERN: You didn't ask that.

24 MR. HINE: Yes, I did.

25 Q. It was originally marked at

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2 6.5 billion, and you were describing to me that  
3 some of that made it into the repo, as I  
4 understand it.

5 A. Some of them were in the -- some of  
6 them -- if we looked at a list of securities on  
7 388-B, some of those securities, many of those  
8 securities were also in -- also being financed by  
9 the Fed.

10 Q. Right.

11 A. So they were what we thought were in  
12 the repo facility that we were going to assume  
13 when we reviewed that list of securities on the  
14 Wednesday, Thursday. Not all of them, though.  
15 Some of them were just not there. And some of  
16 them would have therefore been excluded assets and  
17 some of them would have been included assets.

18 I seem to -- I remember that there was  
19 not many of the excluded assets -- no, actually I  
20 can't remember exactly how many of the included  
21 or -- since the included and excluded list  
22 pertained to the Lehman balance sheet, not to the  
23 repo facility, there were both included and  
24 excluded assets in the Thursday repo facility.

25 Q. So in the Thursday -- September 18

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2 Thursday repo facility --

3 A. Before it was the Barclays -- the Fed  
4 one.

5 Q. No. I want to know -- I want to keep  
6 the story going. The September 18 repo facility,  
7 some of those assets eventually make their way to  
8 Barclays, and within that pool of assets, there  
9 are a certain number of mortgage-related  
10 securities; is that right?

11 A. Yes. There was some -- some of the  
12 mortgage-related securities were in the Fed  
13 facility. Some other securities as well.

14 Q. Do you know how many of the securities  
15 within -- that came to Barclays constituted  
16 mortgage-related securities?

17 A. There is a difference. Again on the  
18 Thursday when we were looking at what we thought  
19 we were going to receive from the Fed, there was a  
20 certain amount of the securities that were on that  
21 list.

22 On the Friday, by the Friday when  
23 we -- after the Fed facility has been refinanced  
24 by the Barclays repo facility, then there were --  
25 out of the 30 or so billion dollars of the

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securities that were both in the Fed facility that ended up in the Barclays facility, there were some of the mortgage assets, but in addition there were other assets, other mortgage assets, some other of the mortgage assets which we hadn't looked at on Thursday, but we had looked at on Tuesday, that turned up in the extra 10 billion.

Q. So as you talked about earlier, on Friday you realize there is two different types -- you assumed two different types of securities, about 32 billion worth of securities that you already knew about using the JPM marks?

A. Correct.

Q. And 10 billion using the BoNY marks of securities that you didn't expect to receive?

A. Correct.

Q. There were mortgage securities in both of those groups; is that right?

A. That's correct. Yes.

Q. Do you know about how much?

A. I remember it being about 3, 3 billion I think. It was about 3 billion, and we thought they were worth about 1 and a half.

Q. And those are the types of -- when you

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say 3 billion, that's within both of those two groups?

A. Yeah. That's what I remember.

Q. And those are the types of securities that you have been focusing on because they get put into your group eventually?

A. That's correct, yeah.

MR. STERN: Is there a question?

MR. HINE: No. He answered it.

MR. STERN: Just wait for a question.

BY MR. HINE:

Q. Did you want to elaborate on something?

A. No. I was just thinking about that. That's fine.

Q. Mr. King, I am going to hand you another document, that has been previously marked as 144-A, and my question is whether you have ever seen that before.

A. Yes.

Q. What is this document?

A. I've seen it before, but I don't really know.

Q. Did you receive a copy of this from

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Mr. Malloy around -- on Friday, the 19th?

A. I'm on the e-mail, so yes.

Q. Do you have any understanding of why Mr. Malloy prepared this analysis?

A. Marty was just involved in the settlement of the repo, so he -- I don't know why he produced this in particular. It is a pretty -- the original e-mail is a pretty vanilla e-mail just saying -- I don't know who Jackie Stanley Jones is, but it is just a description of Fed wire securities, but I don't know what it is other than that.

Q. You don't know why he prepared it?

A. Marty and others, Gerard and others needed to know what was being received by Barclays, so there would have been a lot of e-mails on Friday morning saying -- starting to try to get a handle on what had been received. This looks like one of many of those.

Q. Did you ever hear any discussions on Thursday or Friday of that week about the amount of excess collateral that had been posted towards the repo?

A. I've never heard -- I don't think I

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have heard the term "excess collateral" per se, but there was -- we were obviously extremely worried on the Friday. We were very worried on Wednesday and Thursday. We had a population of securities and we were very worried that those really might not be worth 45 billion dollars.

We were even more worried -- that was with at least a list that was purportedly going to be delivered to us.

We were even more worried over Thursday night and into Friday that now we just had a list of stuff that we had no idea whether it was worth what we just lent against it. So there was lots of discussion of whether there was adequate collateral or how -- actually, no one really talked about whether there was adequate collateral. It was just how much was the collateral worth.

So there was that discussion, but not excess collateral per se.

(Exhibit 391-B, document Bates stamped BCI-EX-S 136198 marked for identification, as of this date.)

Q. Mr. King, I am handing you a document

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to relevant Barclays desks or we had marked them ourselves, or if we didn't know what it is, we had estimated it in some variety of ways.

Q. Were some of the marks, marks that you had put on these assets earlier in the week, say back in Monday or Tuesday?

A. Yeah. Unfortunately, the process lagged, you know, because it was always -- it was almost impossible to keep marks -- so for this balance sheet for example, for example, this would have had to have been produced based on data that we had provided to Gary over the weekend that would have been based on marks that we had put on the portfolio or -- marks that we had put into our spreadsheet on the 19th, some of which would have been based on marks that we had come up with at the beginning of the week.

Q. So it is the accumulated marking by Barclays starting in the 15th all the way through that week?

A. Yeah.

Q. Is the set of marks you used?

A. I think it is also -- rather than using Barclays, it is PMTG at that point. I'm not

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sure the firm had espoused our position, so that was -- it was PMTG's latest estimate line by line, and then that was refined over a period of time.

Q. And then so PMTG -- I didn't mean to ascribe a difference between PMTG and Barclays, but PMTG has been trying to put marks on these various securities dating back to the prior Monday, all the way to the 15th?

A. Correct.

Q. This 2.83 is the product of a series of marks created by that process that -- as of the 22nd?

MR. STERN: Objection to the form.

Q. Let me rephrase that. Let me rephrase it.

The marks that you used to come up with the 2.83 number were PMTG marks, as of the 22nd --

A. No, I don't know whether these are -- no.

Q. OK.

A. This e-mail is as of the 22nd.

Q. OK, I understand.

A. I notice it is at the end of the

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London day, but it is still as of the 22nd.

I don't remember -- we were very, very heavily embroiled in the risk management of the assets that we had acquired by this Monday.

Q. OK.

A. So I don't remember whether this was -- some of the marks that PMTG was using may well have been updated on this Monday. Some of them may have been latest guess over the weekend.

I think probably over the weekend, and then, in other words, they may have come -- some of them would have come from various stages during the course of the previous week.

Q. I guess that was my question. I didn't mean to -- I am sorry.

A. The 2.83 is -- what we would have done was put the value that we thought was on the portfolio of the 42.55, let's say, and then there was the sum of the BoNY marks, which was the 45.18, and the 2.83 just drops out as the difference between the two.

Q. While we are looking at that, what does the "Friday P&L approx." entry mean?

A. There is always carry and yield on a

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portfolio. That would have been that. But I'm not sure -- that would have been what that is.

Q. So other than that -- I think you have explained to me where you get the 2.83, but the marks that you used for PMTG were accumulated by PMTG from the period of the 15th through that weekend, the following weekend; is that right?

MR. STERN: Objection to the form.

You can answer.

A. The -- there was a production line, if you like, of Barclays' desks, my people, me, Gary, that would have resulted in a steady evaluation of the best estimate at the mark, of what we thought would be an orderly liquidation mark or whatever mark we were being asked for at a particular time, to go into -- to go up to product control so that they could produce this.

Q. And that process is what took place for the week of September 15?

A. No.

MR. STERN: Object to the form.

A. No, that -- no. All that happened during the week of the 15th was that -- we didn't -- I don't remember seeing any acquisition



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balance sheets during the course of the week. All our desk did was try to ascertain the risk and the best guess of both a liquidation valuation and an orderly liquidation valuation during the course of that week.

Once the transaction had closed on the Monday, then there was a -- there was both the risk management process, which was my problem, and also a control process, which was product control's, and obviously we had to have an input to product control, which is where the 42.55 would have been the latest -- Gary is using our latest estimate of value -- you can see it hadn't been updated because it still had the cash on it, for example, of the 7 that wasn't received and so on.

Q. I didn't mean to suggest you were doing the acquisition balance sheet during the week. I just wanted to see when the -- the marks that you used were developed during that week; is that right?

MR. STERN: Objection to the form.  
Objection to the form. I don't know what the question is.

Q. You can answer.

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MR. STERN: The question is, is that right? What's the question?

Q. You can answer.

MR. STERN: Well, the question is, "I wanted to see when the marks that you used were developed during that week."

MR. HINE: Jack, if you have an objection to the form, just state it. Don't coach him.

MR. STERN: I am asking you what your question is.

Q. When the marks that you used -- let me restate it.

I didn't mean to suggest that you were working on the acquisition balance sheet, as I thought I might have confused you with my last question, during that week, the prior week, the 15th.

A. Right.

Q. But in developing this 2.83, the marks that PMTG used were the product of its accumulating knowledge about the marks from the 15th through the following weekend; is that right?

A. We would have -- depending on the

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product type -- some -- the 8 -- for example, of that 42.55, approximately 8 billion dollars was cash equities. That's incredibly easy to mark from an accounting point of view. There is an exchange, you type in the ticker for the equity and you get a price. Therefore, that process took one of my analysts approximately -- I think he had Nick Leyhane in London do it for him -- 20 minutes to mark 8 billion dollars in assets.

As a trading matter, it's useless because the -- but it is necessarily where a firm has to mark cash equities. Because there is an exchange. It says the price is 22 dollars for -- you know, Barclays stock is at 3.98. Therefore, you better mark all the Barclays stock at 3.98.

If you happen to be long a billion dollars of Barclays stock and you go out and sell it, you are never going to get 3.98, but the process is pretty easy from the point of view of providing an accounting number.

What we had to do over and above that -- so that could have been updated and may well have been updated on Saturday or Sunday. We would have actually had the Bloomberg ticker in a

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spreadsheet, so it would have kept updating it.

Other things are less easy. Other things are, you have to run a model. You have to take cash in and do all sorts of things to be able to determine what the price is. So there is a full range.

8 billion dollars worth of equities doesn't trade at where those marks are. A good example would be, we had cash equities where the amount of the cash equity that we owned represented 400 days of the historical trading volume. That means if we would have traded as much of that stock as trades every day for the last 400 days, we still couldn't get out of our position.

But still, the last mark, last penny of stock that traded was where we had to mark that position. It took us a year at that point to get out of those positions, and many of them therefore by construction every time we sold them took a loss every time. 300 million dollars of loss or whatever it was in the end, but every time we sold we were selling at a discount to the published mark. Easy to provide, put the published mark

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2 into that spreadsheet.

3 The desk estimates were an attempt to  
4 then say, we have taken that, you know, where the  
5 exchange, such and such, and we assume it is going  
6 to cost us an additional 300 million dollars to  
7 bid side for us to be able to sell them. So we  
8 would have deducted that from that price, and that  
9 would have gone into the 42.55.

10 Now, many times we were just wrong,  
11 because the market was also deteriorating as we  
12 went along. So it was going to end up costing us  
13 an awful lot more to actually sell the stuff.

14 Not only did we have that problem,  
15 over the subsequent days we realized the 7 billion  
16 dollars wasn't going to turn up 7 billion dollars.  
17 We were going to get another slew of securities as  
18 well, many of which were securities that were on  
19 the excluded asset list that we didn't think were  
20 worth anything.

21 So the problem was just getting -- but  
22 that's the reason why -- some aspects of providing  
23 that 42.55 could have been done on an ongoing  
24 basis and others -- but would still have been  
25 subject to a -- you know, an observable exchange

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2 traded mark minus an estimate, and then others  
3 would have been things that would have really  
4 taken models or input from other desks to come up  
5 with.

6 Q. OK. If you see further down on the  
7 spreadsheet, it says, "Previously excluded 50  
8 percent MBS." Do you see that?

9 A. Yeah.

10 Q. That's mortgage-backed securities?

11 A. Is that a zero?

12 MR. STERN: The question is what MBS  
13 means.

14 A. Is that what --

15 Q. Yes.

16 A. MBS means mortgage-backed securities.

17 Q. If you look at footnote 3 on that  
18 line, it says, "September 20 clarification letter  
19 indicates we no longer receive these assets." Do  
20 you see that?

21 A. Yes.

22 Q. Do you have any understanding of what  
23 the September 20 clarification letter does?

24 MR. STERN: Objection to form.

25 Q. With respect to mortgage-backed

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2 securities?

3 A. No.

4 Q. OK. Did, in fact -- I know we have  
5 talked about earlier some of the mortgage-backed  
6 securities made their way into the 32 point -- 32  
7 billion dollar pool we talked about earlier and 10  
8 billion dollar pool from the repo. Do you recall  
9 that testimony?

10 A. Can you say that again.

11 Q. I'm just trying to get you back to the  
12 testimony, but we had previously talked about some  
13 of the mortgage-backed securities ended up in the  
14 pool of assets that Barclays received as a result  
15 of the repo, correct?

16 A. Yes.

17 Q. And we compared that to the original  
18 number of 6.6 billion in mortgage-related  
19 securities. Do you recall that?

20 A. Yes.

21 Q. How many mortgage -- did Barclays  
22 ultimately get the entirety of the 6.6  
23 mortgage-backed securities? And I'm not talking  
24 about -- I'm not trying to confuse you with the  
25 valuation, but I'm just talking about the pool we

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2 originally were talking about --

3 A. I understand. No.

4 Q. Did Barclays get all that?

5 A. No.

6 Q. Do you know how much Barclays did get?

7 A. Eventually -- like by the end of the  
8 year? Or by --

9 Q. Yeah.

10 A. Because we got -- we got some -- we  
11 didn't get all of it. We weren't even supposed to  
12 get all of it for this thing. We got some of it  
13 in the Fed facility that we -- the 30-odd billion  
14 dollars of Fed facility assets that we thought we  
15 were going to get.

16 Q. Right.

17 A. We got some of it in the 10 billion  
18 dollars that we didn't think we were going to get,  
19 and got some of it as part of the JP settlement in  
20 lieu of the 7 billion dollars, and then some of it  
21 we never got.

22 Q. Have you liquidated those securities  
23 yet?

24 A. Some of them.

25 Q. Most of them or a small portion of

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2 them?

3 A. Of what we are calling the  
4 mortgage-backed securities?

5 Q. Yes, the entire pool of  
6 mortgage-backed securities that Barclays received,  
7 no matter how you got it, from Lehman.

8 MR. STERN: Objection to --

9 Q. Can you give me an estimate of the  
10 percentage of it that you have liquidated by now?

11 MR. STERN: Objection to the form.

12 A. We had about 4 point -- we only -- we  
13 estimated that the 6.5 billion was only worth at  
14 most about 3 point something billion, so -- and in  
15 the Lehman -- in the repo that we thought we were  
16 going to get, I think we thought that was about  
17 1.5, even though JP had it at about 3.3.

18 And some of those are very obvious  
19 mistakes as well. Because JP doesn't know any  
20 more than we do what some of the securities are.  
21 Sometimes it says, if I don't know what it is,  
22 mark it at par, but it may actually be worth zero,  
23 and that's the reason why that number comes out so  
24 wrong, because these are so complicated  
25 securities.

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2 mortgage-backed securities that were also losing  
3 money, so we just put them in with those, and  
4 therefore, I didn't track -- even though I could,  
5 I didn't track what was a Lehman security versus  
6 what was a Barclays security. We just organized  
7 them for appropriate liquidation or retention.

8 MR. HINE: OK, Mr. King, that is all  
9 the questions I have. I think one of my  
10 colleagues has some questions to ask you as  
11 well.

12 (Recess)

13 EXAMINATION BY

14 MR. OXFORD:

15 Q. Good afternoon, Mr. King. I  
16 introduced myself earlier on. My name is Neil  
17 Oxford. I represent the SIPA trustee for LBI.

18 Following up on the examination by  
19 Mr. Hine, initially you testified about the  
20 portion of the 6.5 billion of mortgage-backed  
21 securities that Barclays ended up purchasing.  
22 Do you recall that?

23 A. Yeah, yeah.

24 MR. STERN: Wait a second.

25 OK, OK.

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2 Q. OK.

3 A. So they are worth a tremendous amount  
4 less.

5 If you mean of those securities, that  
6 value, I think it was about -- we thought it was  
7 worth about 2 billion dollars or so. What we  
8 eventually ended up with, 2.2 I think, and we must  
9 have sold about -- the last time I was involved  
10 with it, it would have been about 60 percent, I  
11 think, or so.

12 Q. Do you know if Barclays made money on  
13 those securities, the mortgage-backed securities?

14 A. We lost money.

15 Q. Do you know how much or --

16 A. I don't remember.

17 Q. Do you know if there has been any kind  
18 of assessment of how much money Barclays made or  
19 lost with respect to the mortgage-backed  
20 securities that it received from Lehman?

21 A. No, never tried.

22 Q. For the same reasons we talked about  
23 before, it would be difficult to do?

24 A. No. It would actually be easy to do,  
25 just not useful. We had our own portfolio of

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2 Q. I just want to make sure I understand  
3 your testimony. So leaving aside for the moment  
4 the question of value, are you able to estimate  
5 what percentage of that 6.5 billion of  
6 mortgage-backed securities that we have been  
7 discussing that is represented on Exhibit 388-B,  
8 are you able to estimate what percentage of those  
9 mortgage-backed securities ended up in the hands  
10 of Barclays?

11 MR. STERN: Objection to the form.  
12 Get out 388-B. And let's hear the question  
13 again.

14 MR. OXFORD: Can you read it back.  
15 (Record read)

16 A. Not accurately, and the reason for  
17 that is that we got the ultimate delivery of  
18 securities that Barclays received, first the  
19 subset of the ones that it expected to receive in  
20 the original repo, the ones that it got in the 10  
21 billion dollars of repo that it didn't expect to  
22 receive and the ones that it got as part of the  
23 settlement against the 7 billion dollars of cash.  
24 We actually received a lot of securities that we  
25 had -- that would have fallen into that category

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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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IN RE:

Chapter 11

LEHMAN BROTHERS Case No. 08-13555(JMP)

HOLDINGS, INC., et al.,

Debtors.

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HIGHLY CONFIDENTIAL DEPOSITION OF

CHRISTOPHER KIPLOK

New York, New York

Thursday, March 4, 2010

Reported by:  
JOMANNA DeROSA, CSR  
JOB NO. 27494



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| <p>1<br/>2<br/>3<br/>4 March 4, 2010<br/>5 1:08 p.m.<br/>6<br/>7<br/>8 HIGHLY CONFIDENTIAL Deposition of<br/>9 CHRISTOPHER KIPLOK, held at the offices of<br/>10 Boies Schiller &amp; Flexner, LLP, 575 Lexington<br/>11 Avenue, New York, New York, pursuant to<br/>12 Notice, before Jomanna DeRosa, a Certified<br/>13 Shorthand Reporter and Notary Public of the<br/>14 States of New York, New Jersey, California<br/>15 and Arizona.<br/>16<br/>17<br/>18<br/>19<br/>20<br/>21<br/>22<br/>23<br/>24<br/>25</p> | <p>1<br/>2 A P P E A R A N C E S:<br/>3 JONES DAY, LLP<br/>4 Attorneys for Lehman Brothers, Inc.<br/>5 222 East 41st Street<br/>6 New York, New York 10017-6702<br/>7 BY: JENNIFER L. DEL MEDICO, ESQ.<br/>8<br/>9 BOIES SCHILLER &amp; FLEXNER, LLP<br/>10 Attorneys for Barclays<br/>11 5301 Wisconsin Avenue, N.W.<br/>12 Washington, D.C. 20015<br/>13 BY: JONATHAN SHAW, ESQ.<br/>14<br/>15 HUGHES HUBBARD &amp; REED, LLP<br/>16 Attorneys for SIPA Trustee<br/>17 One Battery Park Plaza<br/>18 New York, New York 10004<br/>19 BY: SETH D. ROTHMAN, ESQ.<br/>20<br/>21<br/>22<br/>23<br/>24<br/>25</p>                                                                                                                                                                                                                                                                                                                                                            |
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| <p>1<br/>2 A P P E A R A N C E S (Continued):<br/>3 QUINN EMANUEL URQUHART OLIVER &amp; HEDGES, LLP<br/>4 Attorneys for the Creditors Committee<br/>5 51 Madison Avenue, 22nd Floor<br/>6 New York, New York 10010<br/>7 BY: ERIC M. KAY, ESQ.<br/>8<br/>9 ALSO PRESENT:<br/>10<br/>11 JOSH LIPSON, Videographer<br/>12<br/>13<br/>14<br/>15<br/>16<br/>17<br/>18<br/>19<br/>20<br/>21<br/>22<br/>23<br/>24<br/>25</p>                                                                                                | <p>1 KIPLOK - HIGHLY CONFIDENTIAL<br/>2 THE VIDEOGRAPHER: This is the<br/>3 start of Tape No. 1 of the videotaped<br/>4 deposition of Christopher Kiplok in the matter<br/>5 In re Lehman. Today's date is March 4th,<br/>6 2010, at approximately 1:08 p.m.<br/>7 Will the court reporter please<br/>8 swear in the witness.<br/>9 C H R I S T O P H E R K I P L O K, called as a<br/>10 witness, having been duly affirmed by a<br/>11 Notary Public, was examined and testified<br/>12 as follows:<br/>13 EXAMINATION BY<br/>14 MR. SHAW:<br/>15 Q. Good afternoon, Mr. Kiplok.<br/>16 A. Good afternoon.<br/>17 Q. As I said off the record, my name<br/>18 is Jonathan Shaw. I'm with Boies, Schiller &amp;<br/>19 Flexner. I represent Barclays Capital in this<br/>20 case.<br/>21 You are a partner at the law firm<br/>22 of Hughes Hubbard &amp; Reed. Is that correct?<br/>23 A. Yes.<br/>24 Q. I take it that's a recent<br/>25 promotion. Is that right?</p> |

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| <p>1 KIPLOK - HIGHLY CONFIDENTIAL</p> <p>2 A. Yes.</p> <p>3 Q. Before that, you were an associate</p> <p>4 with Hughes Hubbard &amp; Reed. Is that correct?</p> <p>5 A. Yes.</p> <p>6 Q. And you were an associate of Hughes</p> <p>7 Hubbard &amp; Reed as of -- in September of 2008.</p> <p>8 Is that right?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. You're here today both in</p> <p>11 your individual capacity and as a 30(b)(6)</p> <p>12 witness. Is that your understanding?</p> <p>13 A. Yes, it is, as to two topics on the</p> <p>14 30(b)(6).</p> <p>15 (Exhibit 676-B marked for</p> <p>16 identification.)</p> <p>17 MR. SHAW: I'm showing you what's</p> <p>18 been marked as Exhibit 676-B.</p> <p>19 Q. Do you recognize this as a 30(b)(6)</p> <p>20 notice to which you've been designated or for</p> <p>21 which you've been designated the Trustee's witness</p> <p>22 on two topics?</p> <p>23 A. Yes.</p> <p>24 Q. And those would be Topics Nos. 4</p> <p>25 and 5. Is that correct?</p>                                                                           | <p>1 KIPLOK - HIGHLY CONFIDENTIAL</p> <p>2 A. Yes.</p> <p>3 Q. What did you do to prepare to</p> <p>4 testify as a 30(b)(6) witness on those two topics?</p> <p>5 A. I spoke with other -- others of the</p> <p>6 Trustee's professionals, including professionals</p> <p>7 at Hughes Hubbard and Deloitte &amp; Touche.</p> <p>8 Q. Which professionals did you speak</p> <p>9 with at Hughes Hubbard?</p> <p>10 A. There were several that include</p> <p>11 Mr. Kobak, a couple of associates, and -- and some</p> <p>12 others.</p> <p>13 Q. Who are the associates?</p> <p>14 A. Mr. Mills. And that's all I</p> <p>15 recall.</p> <p>16 Q. Who were the couple of others?</p> <p>17 A. I believe -- I have chatted with</p> <p>18 Mr. Giddens, and I believe Mr. Frelinghuysen as</p> <p>19 well, actually.</p> <p>20 Q. And who at Deloitte have you spoken</p> <p>21 with in preparation for your 30(b)(6) deposition?</p> <p>22 A. Ms. Karp and Mr. Harris.</p> <p>23 Q. What is Mr. Harris' first name?</p> <p>24 A. Christopher.</p> <p>25 Q. What did you speak to Mr. Kobak</p>                                                                                                                                                 |
| Page 8                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | Page 9                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| <p>1 KIPLOK - HIGHLY CONFIDENTIAL</p> <p>2 about, for purposes of preparing for your 30(b)(6)</p> <p>3 deposition?</p> <p>4 A. General background in connection</p> <p>5 with Topics 4 and 5.</p> <p>6 Q. Okay. And what do you recall</p> <p>7 Mr. Kobak telling you?</p> <p>8 A. I recall my conversations with</p> <p>9 Mr. Kobak, and confirming my own understanding</p> <p>10 of -- of those two topics.</p> <p>11 Q. And when did your conversation with</p> <p>12 Mr. Kobak take place?</p> <p>13 A. Over the last several days. Either</p> <p>14 earlier this week or late last week.</p> <p>15 Q. Okay. And you talked to Mr. Mills.</p> <p>16 What did you and Mr. Mills discuss in preparation</p> <p>17 for your 30(b)(6) testimony?</p> <p>18 A. The Topics 4 and 5 that you alluded</p> <p>19 to.</p> <p>20 Q. And what specifically did you</p> <p>21 discuss?</p> <p>22 A. The -- I think they're enunciated</p> <p>23 in those topics. Specifically it was confirming</p> <p>24 my understanding of those topics.</p> <p>25 Q. Did Mr. Kobak provide you with any</p> | <p>1 KIPLOK - HIGHLY CONFIDENTIAL</p> <p>2 facts as to which you will testify today</p> <p>3 concerning those topics?</p> <p>4 A. I don't think so. I think I've --</p> <p>5 he confirmed my understanding, which -- which was</p> <p>6 the goal of our conversation. If there's any</p> <p>7 disagreement, he may -- he may have done so, but</p> <p>8 there was not.</p> <p>9 Q. What about Mr. Mills? Did he</p> <p>10 provide you with any factual information</p> <p>11 concerning those two topics?</p> <p>12 A. I -- I recall Mr. Mills providing</p> <p>13 me with some documents, which included -- the one</p> <p>14 document that I recall is a letter from Jonathan</p> <p>15 Hughes, addressed to the Trustee, and there were</p> <p>16 some others, but I don't specifically recall.</p> <p>17 Q. When did you talk with Mr. Mills?</p> <p>18 A. This week.</p> <p>19 Q. And the letter from Mr. Hughes to</p> <p>20 the Trustee, what was the topic of that letter?</p> <p>21 A. Claims Barclays has made that I</p> <p>22 understand are now the subject of this litigation.</p> <p>23 Q. Did Mr. Mills explain to you why he</p> <p>24 was providing you with a copy of that letter?</p> <p>25 MR. ROTHMAN: Let me just</p> |

| Page 10                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | Page 11                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
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| <p>1 KIPLOK - HIGHLY CONFIDENTIAL</p> <p>2 interject. Mr. Mills doesn't -- isn't a</p> <p>3 person who has personal knowledge of these</p> <p>4 topics or who were -- was involved in these</p> <p>5 topics. He was preparing Mr. Kobak for the</p> <p>6 deposition and showing him documents in</p> <p>7 connection with the preparation.</p> <p>8 MR. SHAW: All right.</p> <p>9 Q. What did you discuss with</p> <p>10 Mr. Giddens about these two topics?</p> <p>11 A. It was similar to my conversation</p> <p>12 with Mr. Kobak, confirming my understanding of --</p> <p>13 frankly, to be sure I had a fulsome understanding</p> <p>14 of both topics, and he confirmed that I had such</p> <p>15 an understanding.</p> <p>16 Q. And when did you talk with</p> <p>17 Mr. Giddens?</p> <p>18 A. Yesterday. Yesterday. I don't</p> <p>19 remember whether it was morning or afternoon.</p> <p>20 Q. For about how long?</p> <p>21 A. I don't recall. Less than an hour.</p> <p>22 Q. And when did you speak with</p> <p>23 Mr. Frelinghuysen about those two topics?</p> <p>24 A. I think it was earlier this week.</p> <p>25 Q. And what did you discuss with</p>                                                              | <p>1 KIPLOK - HIGHLY CONFIDENTIAL</p> <p>2 Mr. Frelinghuysen about those topics?</p> <p>3 A. I recall my discussion with</p> <p>4 Mr. Frelinghuysen was limited to, I think, Topic</p> <p>5 4, the clearance box asset topic.</p> <p>6 Q. And what did Mr. Frelinghuysen tell</p> <p>7 you about that topic?</p> <p>8 A. Again, I presented him with my</p> <p>9 understanding, and I don't think he added anything</p> <p>10 to the understanding I had.</p> <p>11 Q. And when did you speak to Ms. Karp?</p> <p>12 A. This morning.</p> <p>13 Q. And how long did you speak to her?</p> <p>14 A. I don't recall specifically. I'd</p> <p>15 estimate maybe 30 minutes or so.</p> <p>16 Q. Was that by telephone?</p> <p>17 A. In person.</p> <p>18 Q. In person. And did Ms. Karp convey</p> <p>19 any facts to you about either Topic 4 or Topic 5?</p> <p>20 A. She conveyed to me what I'll call a</p> <p>21 high level understanding of the work Deloitte had</p> <p>22 done around Schedule B, to the extent that would</p> <p>23 impact Topic No. 4.</p> <p>24 Q. And what work did she tell you that</p> <p>25 Deloitte had done around Schedule B?</p>                                                                             |
| Page 12                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | Page 13                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <p>1 KIPLOK - HIGHLY CONFIDENTIAL</p> <p>2 A. That Deloitte had tried to</p> <p>3 comprehend the schedule, had requested, on several</p> <p>4 occasions, to meet with Barclays to further</p> <p>5 understand the schedule, that such requests were</p> <p>6 repeatedly denied, and that from Deloitte's</p> <p>7 perspective, the schedule was not helpful.</p> <p>8 Q. Did she say when Deloitte tried to</p> <p>9 comprehend the schedule?</p> <p>10 A. I don't recall specifically, but --</p> <p>11 or if she mentioned it. I -- I do recall that --</p> <p>12 and she refreshed my recollection -- that a</p> <p>13 request to meet with Barclays as to the schedule</p> <p>14 was raised at a meeting that I and others and she</p> <p>15 participated in with some of your partners and</p> <p>16 your client in June, when the request for</p> <p>17 assistance in -- in understanding the schedule was</p> <p>18 refused.</p> <p>19 Q. That would be June of 2009?</p> <p>20 A. Yes.</p> <p>21 Q. And what did you discuss with</p> <p>22 Mr. Harris about Topics 4 or 5?</p> <p>23 A. Mr. Harris was with Ms. Karp when</p> <p>24 we had this discussion. And so, I think my prior</p> <p>25 answers would cover that.</p> | <p>1 KIPLOK - HIGHLY CONFIDENTIAL</p> <p>2 Q. Aside from Mr. Mills, did anyone</p> <p>3 provide you with any documents to review in</p> <p>4 preparation for your 30(b)(6) testimony?</p> <p>5 A. Mr. Mills was assisted with others</p> <p>6 in preparation for my deposition, you know, a</p> <p>7 paralegal and another associate. And whether that</p> <p>8 was in connection with 30(b)(6) or generally, I --</p> <p>9 I don't recall.</p> <p>10 Q. Let's start with Topic No. 5. Has</p> <p>11 the Trustee or any of his representatives had any</p> <p>12 communication with the Securities and Exchange</p> <p>13 Commission concerning any proposed transfer of</p> <p>14 securities to Barclays under Paragraph 8, sub 2,</p> <p>15 of the clarification letter?</p> <p>16 A. The Trustee has not proposed</p> <p>17 transferring securities. I understand 8 sub 2 to</p> <p>18 refer to the 15c3 account.</p> <p>19 Q. That's correct.</p> <p>20 A. Such proposal has not been made.</p> <p>21 Q. Has the Trustee sought permission</p> <p>22 from the SEC or any other regulatory agency to</p> <p>23 transfer securities to Barclays pursuant to that</p> <p>24 provision?</p> <p>25 A. The claim that Barclays has made to</p> |

1 KIPLOK - HIGHLY CONFIDENTIAL  
2 those assets has been the subject of certain  
3 discussions with the SEC, and the SEC has  
4 confirmed -- in those discussions, I'd say that  
5 the SEC staff that those discussions occurred with  
6 agreed with the Trustee's position that, at best,  
7 it would be premature for even a proposal of such  
8 transfer to be made.  
9 Q. Who at the SEC has had those  
10 discussions with the Trustee or the Trustee's  
11 staff?  
12 A. Individuals in the Department of  
13 Market Regulation.  
14 Q. What were their names?  
15 A. They included Mr. Machiaroli and  
16 Mr. McGowan.  
17 Q. Who representing the Trustee was  
18 involved in those communications?  
19 A. I was, as well as Mr. Kobak.  
20 Q. When did those discussions take  
21 place?  
22 A. We meet or have met on what I'll  
23 call a semi-regular basis with the staff,  
24 including the two individuals I referenced, the  
25 SEC staff, you know, throughout the proceeding,

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2 discussions with such an entity?  
3 A. I recall a brief discussion with  
4 FINRA that included Barclays, I'll call it claim  
5 or demand to the 3-3 assets. The SEC staff was  
6 present, and that FINRA's, at least the  
7 individuals we met with, confirmed or had the same  
8 understanding that the estate and the SEC did.  
9 That, again, at best, until  
10 customer claims have been satisfied, it would be  
11 premature to even have a proposed release of those  
12 3-3 assets.  
13 Q. Who representing FINRA attended  
14 that meeting?  
15 A. I recall Ms. Vogel and Mr. Wollman.  
16 Q. And you have summarized what you  
17 understood to be the position of the SEC and  
18 FINRA.  
19 Can you recall anything that they  
20 actually said, the actual words?  
21 A. I don't recall specifically who  
22 said it, but at one point I think I do recall the  
23 phrase "that claim is crazy" being used, but I  
24 don't recall specifically who said it or when.  
25 Q. Let's look at Topic 4 now.

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2 and I don't recall specifically when these issues  
3 were raised.  
4 Q. 2010, 2009, 2008; when?  
5 A. Well, again, I don't recall  
6 specifically when they were made. I know it  
7 wasn't apparent to the estate that Barclays was  
8 making these claims until several months into the  
9 proceeding. I would say generally 2009, but,  
10 again, I don't recall specifically, and I believe  
11 these discussions occurred on more than one  
12 occasion.  
13 Q. Were there any written  
14 communications concerning these discussions or the  
15 topic of these discussions?  
16 A. No. You mean with the SEC?  
17 Q. SEC.  
18 A. There have been written  
19 communications with Barclays, but not with the  
20 SEC.  
21 Q. Are these discussions recorded in  
22 any way?  
23 A. No.  
24 Q. What about any regulatory agency  
25 other than the SEC? Are there any such

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2 What have you done to ascertain  
3 what the disposition of securities or other assets  
4 in LBI's clearance boxes at the time of the  
5 closing was, to the extent the Trustee no longer  
6 retains them?  
7 A. Would you repeat the question? I  
8 mean, are you reading me the topic?  
9 Q. What I'm really doing is misreading  
10 the topic.  
11 A. Okay.  
12 Q. To the extent that the LBI Trustee  
13 or the LBI estate no longer holds any security or  
14 other asset that was held in LBI's clearance boxes  
15 as of the time of the closing, how are such  
16 securities or other assets disposed of?  
17 A. Well, first I think Barclays is  
18 probably very familiar with the disposition of  
19 clearing box assets used to satisfy certain  
20 customer claims, including, you know, over \$42  
21 billion that transferred as part of the PIM  
22 conversion to Barclays, and a slightly larger  
23 amount that transferred to the PAM conversion.  
24 So, you know, I'm assuming your  
25 question is aside from those -- what I'll call



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2 Others were on the phone. I didn't quite know who  
3 was there.

4 But what I principally remember  
5 when I walked in was a negotiation or a dispute, I  
6 frankly couldn't tell when I walked into the room,  
7 between Mr. Cox of Barclays, and Mr. Cutler of  
8 Chase, and my understanding going to Weil Gotshal  
9 was that there was an issue that could prevent the  
10 closing, and it became apparent, when I arrived at  
11 Weil Gotshal, that that issue appeared to be an  
12 issue between Chase and Barclays because there was  
13 a substantial and sustained discussion between  
14 Mr. Cutler. And I believe some of the Wachtell  
15 lawyers were with him, but I just don't recall,  
16 and Mr. Cox. And that ensued -- if I arrived at  
17 5:00 or so, that had to ensue for a couple of  
18 hours.

19 Q. Did you participate in any other  
20 discussions between then and -- and the closing on  
21 Monday morning?

22 A. Well, first of all, I clearly did  
23 not participate in any of those discussions. I  
24 walked in, in the middle of them, and at best was  
25 trying to make heads or tails of what could

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2 possibly prevent the closing.

3 You know, to be clear, that entire  
4 weekend we were focused on transferring accounts  
5 and what, in our view, was fulfill the public  
6 interest of the deal, which was moving as many  
7 accounts as possible, and then, secondly,  
8 preparing for the days and weeks of the SIPA case  
9 that would follow.

10 It was never my intention to  
11 participate, nor frankly seeing what I walked  
12 into, did I have the resources to participate in  
13 the discussions that were occurring either in that  
14 conference room or on the phone. So, I first say  
15 that.

16 There was initially that discussion  
17 with Chase. Later in the evening there were  
18 discussions, I recall, involving issues that DTCC  
19 had. And, again, I was trying to monitor those  
20 discussions, and as the night wore on, there were  
21 some multiple documents. But we were, frankly,  
22 doing all we could to be sure the closing occurred  
23 so that the transfer of accounts happened. We  
24 were looking to the days and weeks to come. We  
25 thought the deal had been done Friday evening

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2 before Judge Peck.

3 Q. Tell me what you recall about this  
4 issue involving the DTCC.

5 A. I recall the DTCC had some concerns  
6 regarding its exposure, and -- and the collateral  
7 available to cover that exposure. I -- I don't  
8 recall much of the specifics. I -- I do recall  
9 that DTCC issues were, in part, discussed at some  
10 point late in the evening around midnight or  
11 12:30. The whole -- there were many occasions, by  
12 the way, when I refer to this group, where the  
13 group would disburse.

14 And I recall Barclays had two or  
15 three conference rooms, and Weil was obviously in  
16 their firm, so Lehman had two or three conference  
17 rooms. The Creditors Committee had a conference  
18 room, all filled with their professionals. And  
19 there would be these gaps in the evening where,  
20 frankly, it would be Mr. Frelinghuysen and me  
21 perhaps alone in the large conference room because  
22 the other parties had broken out, what I'll call  
23 the parties who -- at least Barclays and Lehman --  
24 who were participating in the transaction.

25 But I -- I recall at one point,

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2 midnight or 12:30, and this is in connection with  
3 DTCC, the group reconvened in a large room, and a  
4 pronouncement was made, I believe, by Mr. Harvey  
5 Miller, that the \$250 million consideration that  
6 Barclays was going to pay would first be deposited  
7 with the DTCC, and only at such time that DTCC had  
8 covered its exposure -- I'm speaking in broad  
9 terms -- would such \$250 million be released to  
10 the estate.

11 I remember thinking that that  
12 basically meant Barclays was getting 72,000  
13 accounts for nothing from the estate. But, again,  
14 we were focused on the customer account transfer  
15 process and -- and the transaction proceeded.

16 Q. Were you privy to any other  
17 discussions about the DTCC issue? And I exclude  
18 internal discussions at Hughes Hubbard or with the  
19 Trustee.

20 A. You know, I do recall early morning  
21 hours speaking to Shelly Hirshon at Proskauer, but  
22 I -- I just recall that happening. I don't recall  
23 any of the specifics. And I know Larry Thompson  
24 and some others from DTCC were on and off the  
25 phone at various points. So, I guess what I'm

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2 saying is I remember there were other discussions,  
3 but I just don't remember specifics. The specific  
4 is the point I mentioned about the 250 million.

5 Q. Were you involved at all in the  
6 negotiation of the terms of the clarification  
7 letter?

8 A. No, not at all.

9 Q. Were you involved in any  
10 discussions concerning the terms of the  
11 clarification letter over the course of that  
12 weekend?

13 A. First of all, I don't think I was  
14 aware that a clarification letter existed until  
15 sometime into the evening on Sunday, which I guess  
16 is the 21st. I was aware that after the parties  
17 had left the courtroom, that certain statements  
18 had been made on the record that needed to be --  
19 I'll use your word -- "clarified," but that -- the  
20 understanding I had was that such would have been  
21 accomplished shortly after the sale hearing or  
22 first thing Saturday morning.

23 So, again, I was focused on account  
24 transfers and the like. But Sunday evening I do  
25 recall the term "clarification letter" quite

1 KIPLOK - HIGHLY CONFIDENTIAL  
2 discussions concerning the economic terms of the  
3 sale transaction?

4 A. No.

5 Q. Did anyone, over the course of that  
6 weekend, state or suggest, in any way, to your  
7 knowledge, that the -- that the terms of the sale  
8 transaction, as captured in the APA and the  
9 clarification letter, differed from what had been  
10 approved by the Court?

11 A. I don't recall. I don't recall  
12 that.

13 Q. Was anyone representing the Trustee  
14 tasked with monitoring the negotiation of the  
15 clarification letter?

16 A. No. We were -- I think  
17 Mr. Frelinghuysen and myself -- Mr. Frelinghuysen  
18 had been at Weil Gotshal from the early morning of  
19 Saturday, actually. We asked him to go up to  
20 execute whatever needed to be done to finalize the  
21 deal that had been presented to Judge Peck. And  
22 he remained at Weil Gotshal for countless hours  
23 and even into Sunday for that to occur, and that  
24 did not happen.

25 When I arrived at Weil Gotshal, I

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2 clearly. I think there were drafts on conference  
3 room tables. I never had an opportunity to what  
4 I'd say read or review the document. The one  
5 thing I do remember is at some point being in a  
6 conference room. You know, I was in and out of  
7 many as different documents and issues were  
8 percolating through the wee hours of the morning,  
9 where I believe Mr. Messineo from Weil Gotshal was  
10 at a laptop computer, and there was an issue as to  
11 the 15c3 account, the clarification letter. And  
12 at some point I recall saying to him we need that  
13 asset or something along those lines, and his  
14 response being, you know, don't worry -- don't  
15 worry, we've made -- you know, we've got that  
16 covered, and he raised his hand off of the laptop.  
17 I recall that.

18 But beyond that session where I was  
19 in that conference room, which was -- I think  
20 there were three or four Weil Gotshal lawyers and  
21 at least a half dozen Cleary lawyers, and a couple  
22 of Simpson Thatcher lawyers in the room, I don't  
23 recall any -- anything else regarding drafting of  
24 the clarification letter.

25 Q. Were you present for any

1 KIPLOK - HIGHLY CONFIDENTIAL  
2 was there to monitor, frankly, any -- as I've said  
3 before, issues attendant to anything that could  
4 prevent account transfers from occurring. I was  
5 not -- it was not my understanding, in arriving at  
6 Weil Gotshal, or while I was there, that I would  
7 be, you know, participating in a negotiation. I  
8 tried to keep my eye on as much as possible, but  
9 there were a number of documents and a number of  
10 issues that evening. And all the while still  
11 focused on our team back at Hughes Hubbard that  
12 was working on, you know, motions for the first  
13 days of the case, and -- and what was going on  
14 with the transfers of accounts.

15 Q. I just want to be clear. You may  
16 have said this already. You did not have an  
17 opportunity, between the time you got there or  
18 whenever it was on Sunday, and the closing on  
19 Monday morning, to ever read the clarification  
20 letter. Is that correct?

21 A. No, I don't recall being able to  
22 sit down and read through the letter, no.

23 Q. Do you know whether the Trustee or  
24 any of his representatives requested any changes  
25 to the terms of the clarification letter at any

| Page 34                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | Page 35                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1 KIPLOK - HIGHLY CONFIDENTIAL</p> <p>2 point over the weekend?</p> <p>3 A. The only thing I recall was what I</p> <p>4 mentioned earlier in connection with the 3-3</p> <p>5 account. And -- and I don't recall much more than</p> <p>6 what I've already said, that I know it was an</p> <p>7 issue, and I don't want to travel on any privilege</p> <p>8 grounds, but that was of a concern to Mr. Kobak</p> <p>9 and to me, based on our understanding of what a</p> <p>10 3-3 account was, and the role it would play for</p> <p>11 customer accounts, because we were very concerned.</p> <p>12 We did have an understanding that the customer</p> <p>13 accounts would be left in the estate. We had an</p> <p>14 understanding that substantial assets would be</p> <p>15 left to satisfy them. But that the 3-3 account</p> <p>16 would be one of the primary assets to do that.</p> <p>17 So, I do recall what I said</p> <p>18 earlier, saying -- you know, speaking to</p> <p>19 Mr. Messineo and having -- and I don't recall</p> <p>20 specifically if that was language being added or</p> <p>21 the like. I just don't recall more than that. It</p> <p>22 was, you know, 3:00 in the morning on Monday.</p> <p>23 Q. Were you aware that weekend that</p> <p>24 the clarification letter referenced a Schedule A</p> <p>25 and a Schedule B?</p> | <p>1 KIPLOK - HIGHLY CONFIDENTIAL</p> <p>2 A. No, I was not.</p> <p>3 Q. Did you learn that post-closing?</p> <p>4 A. I believe at -- I mean, the terms</p> <p>5 are not unfamiliar to me now, so at some point,</p> <p>6 but I don't -- I really can't recall when.</p> <p>7 Q. Do you think it might have been</p> <p>8 within the month of September 2008?</p> <p>9 A. Frankly, no, largely because I -- I</p> <p>10 know what happened when I left Weil Gotshal that</p> <p>11 morning, and it was full speed ahead, largely</p> <p>12 transferring assets to accounts that now reside</p> <p>13 with Barclays.</p> <p>14 From the night -- from 1:30 in the</p> <p>15 morning on that Saturday forward, you know, we</p> <p>16 were moving forward with the mission of customer</p> <p>17 protection. I don't recall focusing on APA</p> <p>18 transactions or anything else, but I do recall</p> <p>19 spending countless hours and weekends on transfers</p> <p>20 of accounts for customers.</p> <p>21 Q. Did you stay at Weil Gotshal until</p> <p>22 the closing on -- on Monday morning?</p> <p>23 A. Yes. I left Weil Gotshal roughly</p> <p>24 8:30 in the morning. I believe the wires hit a</p> <p>25 few minutes before 8:00 is my best memory.</p>                                                                |
| Page 36                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | Page 37                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <p>1 KIPLOK - HIGHLY CONFIDENTIAL</p> <p>2 Q. Why was the Trustee concerned that</p> <p>3 the deal close?</p> <p>4 A. You know, as I said earlier, the</p> <p>5 primary concern -- again, I'm saying my</p> <p>6 understanding --</p> <p>7 Q. Sure.</p> <p>8 A. -- is -- was with the transfer of</p> <p>9 accounts to Barclays and Neuberger Berman. So,</p> <p>10 that trading could resume on as seamless a basis</p> <p>11 as possible.</p> <p>12 Q. So, after you left Weil Gotshal at</p> <p>13 about 8:30 in the morning on Monday, where did you</p> <p>14 then go?</p> <p>15 A. I went home and took a shower and I</p> <p>16 was at Hughes Hubbard by about 9:30.</p> <p>17 Q. Okay. And if you can give me an</p> <p>18 overview of what you did between then -- in</p> <p>19 connection with this deal, obviously -- between</p> <p>20 then and the end of September 2008?</p> <p>21 A. I was focused primarily on the</p> <p>22 transfer of accounts and the various pleadings,</p> <p>23 motions, and I forget when the first controversies</p> <p>24 arose, but disputes of the SIPA proceeding.</p> <p>25 Q. In terms of the transfer of</p>                                                                                                                                                                                                         | <p>1 KIPLOK - HIGHLY CONFIDENTIAL</p> <p>2 accounts and assets, what was the allocation</p> <p>3 responsibilities between yourself and</p> <p>4 Mr. Frelinghuysen?</p> <p>5 A. I'm not sure there was a direct</p> <p>6 allocation of responsibilities. I recalled that</p> <p>7 Tuesday morning, which I think is the 23rd, early</p> <p>8 that morning the Trustee asked Mr. Frelinghuysen</p> <p>9 to head to Lehman's operation center in Jersey</p> <p>10 City, New Jersey, I believe it's 70 Hudson Street,</p> <p>11 now premises occupied by Barclays, and asked me to</p> <p>12 head to 745 Seventh Avenue to go to Mr. Russo's</p> <p>13 office so the Trustee had his personnel on site to</p> <p>14 facilitate the transfers.</p> <p>15 As I was heading up there, I was</p> <p>16 directed to 1271 -- I think it's Sixth Avenue --</p> <p>17 it's the Barclays office now -- which is where I</p> <p>18 headed. And so, to the extent there was a</p> <p>19 division at all, it was I would be up at the New</p> <p>20 York office and Anson would be in Jersey City.</p> <p>21 Q. Did you deal -- strike that.</p> <p>22 In connection with the -- with</p> <p>23 requests for transfers -- strike that.</p> <p>24 In connection with the request that</p> <p>25 assets be transferred, did you deal with former</p> |

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2 Lehman employees who are now employed by Barclays?

3 A. Yes.

4 Q. Who particularly did you deal with?

5 A. The -- I guess beginning that  
6 Tuesday, my primary contact was a managing  
7 director named Laura Vecchio, and the idea was --  
8 the premise was that we wanted -- and "we" being  
9 the estate -- wanted to transfer customer assets  
10 as promptly as possible, knowing that ultimately  
11 there would be, as there has now been, a  
12 reconciliation of all those transfers.

13 Ms. Vecchio's role was to be a  
14 central point so that I wouldn't be getting  
15 requests from multiple -- what I'll call  
16 Lehman/Barclays people. That did still happen. I  
17 recall in particular Ms. Black sending me many  
18 varied and confusing and different instructions  
19 that had to be then vetted through Ms. Vecchio. I  
20 recall a Mr. Jennings doing the same thing.

21 I don't think anything was being  
22 done in bad faith, but I think having the central  
23 point of contact was helpful because otherwise the  
24 demands being made by different Barclays personnel  
25 were often inaccurate and appeared to be confused

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2 and a half with this past December's motion and  
3 order.

4 Q. You said when you went up to Lehman  
5 you stated that your role was to provide whatever  
6 authorization, depository is needed in connection  
7 with the release of customer assets.

8 To whom did you convey that?

9 A. I -- I said that to Ms. Vecchio. I  
10 remember having a conversation at some point, I  
11 believe, during the week of the 22nd, or the  
12 following week with Mr. Raisler at Sullivan &  
13 Cromwell when there were certain issues by Chase  
14 Bank, and I remember saying to him our role is to  
15 facilitate customer account transfers.

16 And he actually said he had always  
17 worried that if there ever was a large  
18 broker-dealer failure, it would be the Trustee  
19 that would be the block to customers getting their  
20 assets, not the depository, and that he was  
21 very -- and how grateful he was that the Trustee  
22 was trying to move customer assets on an expedited  
23 basis.

24 So, those are the two conversations  
25 I, in particular, remember having. There very

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2 on their side.

3 Q. In determining whether to approve  
4 or reject any particular request for a transfer,  
5 what criteria did you apply?

6 A. The entire premise was that we were  
7 transferring customer assets, and that was the  
8 understanding that we portrayed at the beginning.  
9 Literally when I went up to Lehman, I said this  
10 is -- my role is to provide whatever  
11 authorization, you know, the depositories -- in  
12 connection with me, it ended up primarily being  
13 Chase -- would need to release customer assets to  
14 get into customer accounts.

15 And it was with that understanding  
16 that all -- that I was -- that I had been made  
17 available, and in general that I would be  
18 authorizing any of the request. So, a request  
19 would be made, and I would be sure it was verified  
20 through Ms. Vecchio that it was related to  
21 customer accounts, again, on the entire  
22 understanding that should there be any missed  
23 deliveries, over-deliveries, under-deliveries, that  
24 would be reconciled in due course, which, I think  
25 as Barclays knows, was accomplished over a year

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2 well may have been others.

3 I recall conversations with  
4 Mr. Novikoff (phonetic), I believe Mr. Minland at  
5 Wachtell, that it was my role to provide them with  
6 the authorizations they required to accomplish,  
7 again, the transfer of customer assets.

8 Q. You say you recall a conversation  
9 with Ms. Vecchio. When did that conversation take  
10 place?

11 A. I don't recall specifically, but  
12 likely it would have been the 23rd when I arrived.  
13 Sort of this is just -- this is who I am, this is  
14 why I'm here, how can I be helpful to the transfer  
15 of customer accounts.

16 Q. Do you remember any of the specific  
17 words used in that discussion?

18 A. No.

19 Q. In determining whether to approve  
20 any given request for a transfer of assets, what  
21 steps did you take to ensure or to verify that the  
22 assets in question were customer assets?

23 A. I was relying primarily on  
24 Ms. Vecchio as a gatekeeper, and the fact that  
25 should there be a reconciliation, it could be done



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2 so later. Largely I was relying on the fact that  
3 I was acting in good faith, and that the parties  
4 would be too, to be sure customer assets were  
5 transferred. And there were -- there were  
6 over-deliveries that were -- that did come back to  
7 the estate later.

8 But there was, I think,  
9 intentionally not, you know, a large diligence  
10 process at the time, for the very reason that we  
11 wanted customers to get their assets as quickly as  
12 possible. We weren't about to have 1,000 Deloitte  
13 accountants descend on Lehman. We intended to  
14 step back, allow the transfers to occur, and deal  
15 with the remaining customers that were left, and  
16 in a reconciliation, and as much as was presented to  
17 the Court. I believe Mr. Caputo made that clear,  
18 that that was the intent at the beginning of the  
19 proceeding.

20 Q. Did you require any representations  
21 from Barclays explicitly that assets being  
22 requested were customer assets?

23 A. I believe that the process I had  
24 with Ms. Vecchio was to get her okay that these  
25 were assets for the transfer of customer accounts.

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2 mean, I have spoken to Neal. I know who he is.  
3 But I don't recall -- you know, I don't recall  
4 anything specific with Mr. Ullman that week. He  
5 was not where I was. Neal worked in Jersey City.

6 Q. Ms. Vecchio was in Manhattan?

7 A. That's right.

8 Q. I'm showing you what has previously  
9 been marked as Exhibit 671-B.

10 Do you recognize that document as  
11 an e-mail from Mr. Frelinghuysen to Mr. Blackwell,  
12 on which you were copied on Thursday, September  
13 25th, 2008?

14 A. I can read it, sitting here today.  
15 That is what it appears to be, yes.

16 Q. Do you have any recollection of  
17 receiving this document at the time?

18 A. No.

19 Q. Do you have any understanding of  
20 what the issue that this document related to was?

21 A. No.

22 Q. I'm showing you what has previously  
23 been marked as Exhibit 447 in this case.

24 A. Okay.

25 Q. Do you recognize that as an e-mail

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2 And I generally recall that the  
3 language used in the authorizations, as a general  
4 matter, included authorizing the transfer of  
5 customer accounts.

6 Q. Did you take steps to ensure that  
7 that language that you just referred to would  
8 appear in authorizations of customer account  
9 transfers?

10 A. I'd say I used my best efforts at a  
11 time when there was a lot going on. So, it  
12 wouldn't shock me if it didn't happen each and  
13 every time. But more to the point, it was clearly  
14 my intent, with any authorization I made, that it  
15 was for a customer asset used to support a  
16 customer account.

17 Q. Did you come to learn, during that  
18 week, that Mr. Frelinghuysen had had a discussion  
19 with Alastair Blackwell concerning the transfer of  
20 non-customer assets to Barclays pursuant to the  
21 APA?

22 A. I don't recall that, no.

23 Q. Did you have any communications  
24 with Neal Ullman during that week?

25 A. If I did, I don't recall them. I

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2 to you from Laura Vecchio, dated Friday, the 26th  
3 of September, 2008?

4 A. I can read it today, and that is  
5 what it appears to be, yes.

6 Q. Do you recall receiving this e-mail  
7 at the time?

8 A. No, I do not.

9 Q. Do you recall anything about the --  
10 the request for a transfer of \$269 million in  
11 securities from the DTC to the 636 box?

12 A. No, I do not.

13 Q. Do you recall how you responded to  
14 this request?

15 A. No, I don't.

16 Q. Do you recall any discussion with  
17 Ms. Vecchio or anyone else about this request?

18 A. Not this request specifically. I  
19 spoke to Ms. Vecchio at that time, probably  
20 multiple times a day.

21 (Exhibit 677-B marked for  
22 identification.)

23 THE WITNESS: Okay.

24 Q. You've had a chance to review  
25 Exhibit 677-B?

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2 A. I've looked at it, yes.

3 Q. And do you recognize that as an  
4 e-mail string that you were sent -- or that you  
5 were copied on various parts of -- and as you  
6 wrote various parts of on the 24th of September,  
7 2008?

8 A. Reading it today, that's -- that's  
9 what it appears, yes.

10 Q. Do you have any recollection of  
11 the -- the transfers that are being discussed in  
12 this e-mail string?

13 A. Not specifically.

14 Generally, this is reflective of  
15 what I believe I had mentioned earlier, and it was  
16 Ms. James. I don't know if I used her proper  
17 name, and Mr. Jennings as a couple of the -- what  
18 I'll call Lehman/Barclays people who are reaching  
19 out to me directly for requests.

20 And in this instance I can see,  
21 reading the document, that it was an instance  
22 where I went back to Ms. Vecchio on the e-mail to  
23 see if she indeed concurred with the transfers of  
24 the customer foreign futures and foreign options  
25 security account, which I -- I did do.

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2 an e-mail sent by you to Ms. Vecchio and  
3 Mr. Frelinghuysen on Wednesday, the 1st of  
4 October, 2008?

5 A. Reading it, I don't recall it, but  
6 that is -- that is what it appears to be, at least  
7 the top message.

8 Q. And the top message says:

9 "Anson, please do not take action  
10 in this yet. Laura is clarifying this  
11 instruction."

12 What did you mean by "Laura is  
13 clarifying this instruction"?

14 A. I don't recall specifically.  
15 Generally, I would believe this would refer to --  
16 there were several instances where -- again, I  
17 mentioned were people would try to reach out to  
18 me.

19 There were instances where  
20 Ms. Vecchio, I recall, would get several requests  
21 and she would try to filter them through herself.  
22 So, this may have been an instance where  
23 Ms. Vecchio said to me, perhaps in person or by  
24 the telephone, wait a minute, we need to have  
25 further clarity.

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2 But beyond that, I don't recall  
3 this or any other transfers in -- in particular.  
4 Q. So I'm clear, you now believe that  
5 when you earlier said Ms. Black, you were thinking  
6 of Ms. James?

7 A. If that's what I said, I think I  
8 may have -- I -- I recall Ms. James on the future  
9 side. And the reason I, in part, recall her is  
10 her e-mail signature had this kind of funky thing  
11 where her name slid in. But I remember Ms. James.  
12 Ms. Black I may have -- I think I meant Ms. James,  
13 if that's what I said.

14 But I do recall Ms. James making  
15 some requests, which at first she had asked for,  
16 just to use a round number, 300 million from the  
17 XYZ account, and then it would come back as less  
18 than that, and she'd ask for less. And I just  
19 remember having the sense that there was confusion  
20 on the Barclays side. And that was one of the  
21 reasons that we took some comfort in funneling  
22 things through Ms. Vecchio.

23 (Exhibit 678-B marked for  
24 identification.)

25 Q. Do you recognize this document as

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2 But, again, I don't recall  
3 specifically. I mean, reading it, it seems to me  
4 that I was telling Anson not to act on this. And  
5 I would assume he did not act on it, based on my  
6 saying so.

7 Q. But you have no specific  
8 recollection of this particular incident?

9 A. I don't recall this specific  
10 message, no, not -- not specifically.

11 Q. And you don't recall any discussion  
12 with Ms. Vecchio about this particular issue; do  
13 you?

14 A. Not specifically, no.

15 THE VIDEOGRAPHER: The time is  
16 2:13. We are going off the record.  
17 (Recess taken.)

18 THE VIDEOGRAPHER: The time is  
19 2:21. We are back on the record.

20 (Exhibit 679-B marked for  
21 identification.)

22 THE WITNESS: Okay.

23 Q. Do you recognize this, sir, as an  
24 e-mail chain involving you, I believe, at every  
25 stage, although at one point your e-mail address

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was misspelled and it was later forwarded to you?

A. Reading it, this is -- that's --  
that is what it appears to be, yes.

Q. Okay. Looking at the most recent  
e-mail on the chain, so, the very first one, you  
say:

"I think we are okay with the  
below. We should revisit the LOC issue later  
after transfers of collateral are affected."

Do you see that?

A. I do.

Q. When you say "I think we are okay  
with the below," were you referring to the first  
paragraph of the e-mail from Mr. McDaniel to you  
that's dated October 2nd at 1:28 p.m.?

A. I -- I don't recall specifically.  
I can read the document as well as you can. I  
recall generally that this was an issue that  
became a topic of great discussion and  
consideration, without breaching any privilege  
within my firm, and I believe it went on much  
later than the first few days of October.

So, I can read what I said, and you  
may well be right, that it refers to that, that,

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you know, my reading today would seem to -- that  
that may make sense, but I also -- what I do  
recall was that this was not the end of this  
discussion.

Q. As you read it today, do you have  
any recollection of whether you -- when you said  
"I think we're okay with the below," the below  
you're referring to is the first paragraph of the  
first e-mail in this chain?

A. I actually do not have that  
recollection. I may well be referring to Jim  
McDaniel's second note to me, which it appears he  
had a discussion with my partner, Carolyn Levine,  
but I don't -- I just don't recall either way.  
I'm reading it, you're reading it, but I don't  
recall.

(Continued on next page for jurat.)

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MR. SHAW: I have no further  
questions for you, sir.

MR. ROTHMAN: I have no questions  
for the witness.

MR. STERN: No questions.

MR. DAKIS: No questions.

MR. SHAW: Thank you very much.

THE VIDEOGRAPHER: The time is  
2:25. We are going off the record.  
(Time Ended: 2:25 p.m.)

CHRISTOPHER KIPLOK

Subscribed and sworn to  
before me this day  
of March, 2010.

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HIGHLY CONFIDENTIAL - A. KIRK  
UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x

In Re:

Chapter 11

LEHMAN BROTHERS Case No. 08-13555(JMP)  
HOLDINGS, INC., et al., (Jointly Administered)

Debtors.

-----x

\* \* \* HIGHLY CONFIDENTIAL \* \* \*

DEPOSITION OF ALEX KIRK

New York, New York

August 31, 2009

Reported by:

KATHY S. KLEPFER, RMR, RPR, CRR, CLR

JOB NO. 24545



**HIGHLY CONFIDENTIAL - A. KIRK**  
myself down. And I'm going to ask you please to wait until there's a full question asked before you answer so that we can, as best we can, get a clear record.

A. Uh-huh.

**Q. Okay?**

**Did you have discussions with anyone other than your counsel, Mr. Kelley, to prepare for your deposition today?**

A. Yes.

**Q. With whom?**

A. I don't remember.

**Q. Mr. Kelley or anybody from his firm? Anybody outside of his firm?**

A. Outside his firm we met with the Barclays lawyers.

**Q. Okay.**

A. I don't remember their names.

**Q. And by whom are you employed, sir?**

A. Currently I'm not employed.

**Q. Was there a time when you were employed at Lehman Brothers?**

A. Yes.

**Q. Can you give me, sir, just a brief**

**HIGHLY CONFIDENTIAL - A. KIRK**  
**description of the positions you held?**

**How long were you at Lehman?**

A. I was at Lehman two separate stints. I was at Lehman from December of 1994 until January of 2008.

**Q. Uh-huh.**

A. And I returned to Lehman in July of 2008. When I went to Lehman Brothers from basically July of -- or, December of 1994 till December 2001, I ran the distressed debt business for Lehman Brothers. From 2002 until 2006, I ran the high-yield and leveraged loan business for Lehman Brothers. From 2006 until October of 2007, I ran the global credit businesses. From October 2007 until January of '08, I was co-chief operating officer of fixed income, and from -- and then I left the firm. When I returned, I was global head of principal businesses for that brief period of time.

**Q. And why did you leave the firm in January of '08?**

A. The global head of fixed income, Roger Nagioff, had resigned; my partner, Andy Morton, was promoted to head of fixed income; and I

**HIGHLY CONFIDENTIAL - A. KIRK**  
reached a mutual agreement to leave the firm with senior -- with the president of Lehman Brothers.

**Q. And where did you work in between January of '08 and July of '08 when you returned to Lehman?**

A. Didn't work.

**Q. And what occasioned your return to Lehman in July of '08?**

A. They had promoted Bart McDade to be president of the firm, and he requested that I return to the firm within a few days of his elevation.

**Q. And I take it you worked at Lehman -- well, for how long after July of '08 did you work at Lehman Brothers?**

A. Until the end. Until most of the employees were transferred to Barclays, U.S. employees.

**Q. And at the end, did you transfer over to Barclays yourself?**

A. Yes.

**Q. And when did you start work at Barclays?**

**HIGHLY CONFIDENTIAL - A. KIRK**

A. I don't remember the transfer date, to be honest with you. I worked there till the first week of November.

**Q. First week of November '08?**

A. Yes.

**Q. What positions did you hold at Barclays?**

A. I didn't have a position at Barclays.

**Q. Was there -- I know it was sort of tumultuous times. Was there any break in between leaving Lehman and going to Barclays, or did you just sort of start working at Barclays at the end of the Lehman --**

A. Whenever the actual HR records transferred.

**Q. Okay. Did you have a written employment agreement with Barclays?**

A. No.

**Q. Was any written employment agreement ever offered to you by Barclays?**

A. No.

**Q. Would you describe to me your compensation package at Lehman -- withdrawn. What was your compensation arrangement**

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**for Lehman when you returned in July of '08?**

A. I would, when I returned, I would receive salary.

**Q. And what was the salary?**

A. It was supposed to be \$400,000, but through an administrative mistake, I got paid \$225,000.

**Q. And what was your salary at Barclays?**

A. The same.

**Q. Did you have any arrangements or agreements for a bonus at Lehman?**

A. No.

**Q. Did you have any arrangements or agreements for a bonus at Barclays?**

A. Yes.

**Q. What were those?**

A. Let me clarify.

**Q. Sure.**

A. About two weeks after I arrived at Lehman, I was granted, without a request -- maybe two or three weeks, I don't remember the exact time -- equity under a program they had started that spring. They were granting equity to a lot of the senior executives, and I was

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granted I think it was 750,000 shares of Lehman equity.

**Q. And what were your bonus arrangements or agreements with Barclays?**

A. About the end of October, I reached out to Bart McDade suggesting that perhaps Barclays could pay me a bonus before I left. About a week later, they informed me that they would pay me \$15 million in two separate installments.

**Q. And were those installments to be paid on the first and second anniversary of your Barclays tenure; was that the arrangement?**

A. No, it was November 15th and February -- sometime in February.

**Q. Did you receive either of those payments?**

A. Yes.

**Q. The first one, I take it?**

A. Both.

**Q. Both, okay.**

**Why did you leave Barclays?**

A. I had -- because I wanted to leave the sell side of the business, broadly, and move to

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the buy side of the business.

**Q. Could you explain to me what you mean by that?**

A. Meaning I wanted to go work as a principal in a hedge fund or a money management firm.

**Q. Did you do that?**

A. I'm in the process of setting up a firm right now.

**Q. Before you went to work at Barclays, before the end of Lehman, had you had any discussions with anyone at Barclays about the prospects of working there after the Lehman sale was concluded?**

A. I was approached by Bob Diamond to see if I was interested in a job, broadly, as opposed to a specific job. I told him I wasn't.

**Q. Pardon me?**

A. I was not.

**Q. And when were you approached by Bob Diamond?**

A. At some point within the first week or two that they were -- I would say probably that week that they were negotiating to buy the firm.

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If not that week, the week after.

**Q. Okay. We're going to spend a lot of time today talking about the negotiations on that point, so let me take this point to frame out some dates.**

I put before you a blank calendar which may help you with days of the week that we'll talk about, but when you talk about the week in which there were negotiations, could you tell me what week or weeks you're talking about?

A. The week of September -- Monday, September 15th through Friday, you know, through Sunday, September 21st.

**Q. And at what point during that week did Mr. Diamond talk to you about coming to work for Barclays?**

A. I don't remember if it was that week or the following week.

**Q. Again, just to give us a time point, the transaction we're talking about closed on September 22. Do you recall if it was before or after the closing?**

A. I don't recall.

**Q. Was it just you and Mr. Diamond in the**

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conversation?

A. Yes.

**Q. And apart from this conversation with Mr. Diamond, had you had discussions with anyone about going to work for Barclays?**

A. No.

**Q. And when you had the discussion with Mr. Diamond, did he talk to you about a compensation package?**

A. No.

**Q. When did you first talk to anyone at Barclays about a compensation package?**

A. First conversation I had with anybody at Barclays was the meeting I sat down with Rich Ricci where he told me what the severance/compensation packet bonus would be, which was in late October.

**Q. Had you had any conversations with any of your fellow Lehman employees about the topic of compensation at Barclays?**

A. Bart McDade.

**Q. Can you describe that conversation with Mr. McDade?**

A. Yes. Several of my colleagues were --

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who had signed employment agreements were resigning from the firm and receiving large payouts upon their leaving the firm, and I suggested to Bart that it would be fair if I was treated in a similar way, despite not having a written contract.

**Q. And what did Mr. McDade say to you?**

A. He said he agreed and he would talk to Barclays about that. He was on point for those sorts of issues with Barclays.

**Q. Do you know if he did talk to anyone at Barclays about you in that regard?**

A. I assume he did.

**Q. And why do you assume that?**

A. Because they approached me with a deal --

**Q. Was the conversation --**

A. -- a couple weeks later.

**Q. I beg your pardon.**

Was the conversation with Mr. McDade during the week of the negotiations between the 15th and the 22nd?

A. No, it was sometime in late October.

**Q. Did you have conversations with anyone**

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at Lehman during that week, the 15th through the 22nd?

A. No.

**Q. Let me just put a full question so that we have a clear record, okay?**

A. Yeah.

**Q. Did you have conversations with anyone during the week of the 15th to the 22nd about compensation that would be paid to you at Barclays after the 22nd?**

A. No.

**Q. I think you referred a moment ago to people receiving payouts when you left the firm. What firm were you referring to?**

A. Barclays.

**Q. And who were those people you were referring to?**

A. Mike Gelband was one. I believe Kaushik Amin was another.

**Q. Anyone else?**

A. Not that I recall directly.

I'm sorry. Yeung Lee was another.

**Q. Anyone else?**

A. That's all I can recall. There were

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many people leaving Barclays at that time.

**Q. Just as a general matter, when you say there were many people leaving Barclays, are you referring to former Lehman employees --**

A. Yes.

**Q. -- who transferred?**

A. Yes.

**Q. And then left Barclays?**

A. Yes.

**Q. And if you know, sir, why were these people who were leaving Barclays, Gelband, for example, receiving payouts from Barclays on their departure?**

MR. HUME: Objection. Calls for speculation.

A. I don't know.

**Q. Why did you get payments in the amounts that you did from Barclays having worked there for such a short period of time?**

MR. KELLEY: I'll make the same objection.

**Q. You can answer, I think.**

A. I don't know.

**Q. Did you talk to anybody about that?**

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A. No.

**Q. Were you surprised to receive payments in that amount from Barclays, having worked there for such a short period of time?**

A. No.

**Q. I may have been a bit confused about the time periods, but when you said you were to be paid 15 million by -- actually, just remind me, when did you leave Barclays?**

A. November, first week.

**Q. When we talked about the bonus to be paid to you, the \$15 million in total, I think you had told me it would be paid in November and then in February?**

A. Yes. Uh-huh.

**Q. You left before the February payment would have come due, correct?**

A. Yes.

**Q. Do you know why they paid you the second piece?**

A. It was agreed that they would pay me.

**Q. When was it agreed? At the time you left or at some time before that?**

A. When I was leaving, as long as I

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didn't compete with them or solicit their employees for six months, I was paid -- I would be paid those amounts of money.

**Q. Was the non-compete/non-solicitation in a written agreement?**

A. Yes.

**Q. Did you have a written agreement concerning your departure from Barclays?**

A. Yes.

**Q. That went beyond the non-compete and -- withdraw. That's a terrible question.**

**When did you sign the written agreement with Barclays?**

A. Sometime in November.

**Q. Do you have a copy of that agreement?**

A. I do.

**Q. Did you bring it with you?**

A. No.

Unless you brought it.

MR. ENRIGHT: No.

MR. GAFFEY: Just for the record, I should say I think it's probably called for by the subpoena. We don't have to have a colloquy about it now. I just want to make

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my record.

I think it was called for by the subpoena. I also think it would be called for by our document request to Barclays.

MR. HUME: I think it's from November, a different kind of agreement. That's the only reason. We'll look for it.

MR. GAFFEY: If you could, and if --

Can we go off the record for a minute?  
(Discussion off the record.)

BY MR. GAFFEY:

**Q. Now, when you met, Mr. Kirk, with Mr. Hume or people from his firm, did you talk about events during a time period other than the time you were employed by Barclays?**

MR. KELLEY: Objection. Privileged.

MR. GAFFEY: I think I can inquire to find out -- a yes or no will tell me whether or not I can press on the privilege point.

**Q. If you just answer yes or no.**

MR. KELLEY: No, I'll make the same objection.

**Q. When did you meet with the lawyers for Barclays?**

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A. Last Thursday.

**Q. Who was present?**

A. Mr. Hume and -- who was the other?

MR. KELLEY: If you know.

A. I don't remember that guy's name.

**Q. And I take it Mr. Kelley or people from his firm were there as well?**

A. Yes.

**Q. Anyone else other than lawyers from Mr. Kelley's firm or Mr. Hume's firm?**

A. No.

**Q. Did you review any documents? Just answer that yes or no, please.**

A. Yes.

**Q. Did any of those documents have the effect of refreshing your recollection about the events concerning the sale of assets from Lehman to Barclays?**

A. Some.

**Q. Which ones?**

A. I don't remember specifically.

**Q. Are there any that you remember specifically that refreshed your recollection about matters?**



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A. Not in particular.

**Q. In general?**

A. Not in -- generally, yes.

**Q. Did those documents cover a time period prior to -- on or prior to September 22?**

MR. KELLEY: I object to that.

MR. GAFFEY: I'm not sure of the nature of the objection, David.

**Q. Can you answer it?**

MR. KELLEY: Privileged.

MR. HUME: We would assert the same objection.

MR. GAFFEY: Do you contend you have a privilege with this witness?

MR. HUME: I think the objection -- I assume what you're questioning is to try to attack this privilege.

MR. GAFFEY: I'm not attacking the privilege. I'm just trying to find out if you have a basis to assert it.

Do you contend you have a privilege?

MR. HUME: Yes, I think that your motion suggested that there were fiduciary breach claims that you were considering as

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to senior Lehman officers and as part of your investigation of potential claims against Barclays, but the same theory would give rise to claims against the officers and against Barclays. So, yes, I think we do have a common interest privilege in that we both deny those claims.

MR. GAFFEY: I'll leave that, but I don't want to have a colloquy on the record. I disagree.

BY MR. GAFFEY:

**Q. Let's talk about that week, the week in September that's brought us here. Can you tell me, sir, as a general matter, did you play any role in the negotiations of the agreement between Lehman and Barclays that led to the sale of assets to Barclays.**

(The witness confers with Mr. Kelley.)

A. Is the week you're referring to the 15th through the 21st?

**Q. Yes. Well, let me reframe it because you asked that question. At any point during September of 2008, were you involved in any discussions or negotiations with Barclays?**

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A. Yes.

**Q. When?**

A. I was involved in discussions that went from Friday, the 12th of September, until Sunday, the 14th, of the transaction that ultimately failed, and I was asked to participate in the discussions, facilitate the discussions starting Friday morning, the 19th.

**Q. So if I understand your answer correctly, you're not involved in any discussions or negotiations with Barclays in the period from the 15th through the 18th?**

A. That is correct.

**Q. Okay. Describe for me, if you would, generally the nature of what you did in connection with the negotiations from the 12th to the 14th, that is, from the Friday to the Sunday?**

A. Generally, I helped organize the due diligence of the assets of Lehman Brothers that I was responsible for specifically and helped coordinate with some of the other departments meetings that would take place with Barclays.

In addition, I was down at the Federal

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Reserve both Saturday and Sunday, so I participated in probably two different discussions with Barclays on Saturday and Sunday.

**Q. And what was the -- actually, if you don't mind, just so we have some term we can use and I don't have to keep saying it this way, could you give me, you referred to the assets you were responsible for specifically. What were those assets called?**

A. The global principal business.

**Q. What was the nature of the transaction that was being discussed from the Friday and the Saturday and the Sunday, the 12th through the 14th?**

A. The nature of that transaction was Barclays was going to buy all of Lehman Brothers.

**Q. Do you know what the structure of that transaction was? Was it an asset purchase? Stock purchase? Did you have any sense of that?**

A. It was a -- I'm not an M&A expert, but I believe they were going to assume the debt and other contractual obligations of Lehman

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Brothers. They were going to not assume the preferred stock of Lehman Brothers and they were going to pay a nominal, less than a dollar, per share price for part of the equity and they were going to spin off the real estate and private equity positions into a new company which would be capitalized with debt by a consortium of lenders and have as its equity capital the preferred stock of Lehman Brothers and the equity.

**Q. And you said that that transaction failed. Why did that transaction fail, do you know?**

A. I was told by Bart McDade that the FSA had turned down the application to close that transaction.

**Q. When were you told this by Mr. McDade?**

A. Sunday around noon.

**Q. Now, did you have any role in those negotiations, again I'm on the 12th through the 14th, other than as you described, the sense I'm getting is primarily involved with due diligence for the global principal business.**

A. Yes, we had -- I spent most of my time

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trying to coordinate due diligence with our principals and the rest of the street, meaning Goldman Sachs, Citigroup, First Boston, et cetera, around the value of those assets which they were going to make a loan to the spun-off company.

**Q. And were Barclays personnel involved in that process?**

A. Not in the due diligence process, no.

**Q. Were you in touch with Barclays personnel about this due diligence process?**

A. There were some joint meetings that were arranged between Goldman Sachs and Citigroup as point for the street and Barclays and Lehman Brothers together. Barclays personnel were obviously in those meetings.

**Q. To your knowledge, at any point in that period from Friday to Sunday were people from Barclays given an opportunity to review Lehman's books for due diligence purposes?**

A. Yes, I believe they continued to do due diligence over the weekend.

**Q. And did you have any involvement in that project, that process, giving access to**

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Lehman's books to personnel from Barclays?

A. I don't recall specifically, but probably. We were down at the Federal Reserve in rooms across the hallway.

**Q. During the period from Friday, the 12th, through Sunday, the 14th, were you dealing with any particular people at Barclays who you could name?**

A. Archibald Cox. Bob Diamond. Rich Ricci. Michael Klein, as their agent.

**Q. Anyone else?**

A. Those are the ones I recall.

**Q. And was there a principal -- were there a group of people you would describe as the principal negotiators for Lehman? Again, I'm in the 12th through the 14th.**

A. Mark Shafir, who was head of M&A; Bart McDade, who was president; and via telephone, Dick Fuld.

**Q. Anyone else you would characterize, that you would describe as Lehman's principal negotiators?**

A. I was the advisor. I believe, although I don't know for sure, I don't have any

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direct knowledge, but I have secondhand knowledge that Skip McGee was involved.

**Q. Anyone else?**

A. That's all I know.

**Q. What's the basis of your secondhand knowledge that McGee was involved?**

A. Mark Shafir would call Skip from the Federal Reserve.

**Q. After that transaction failed, did there come a time when you learned that negotiations had begun again between Barclays and Lehman?**

A. Late Sunday night sometime between 11 and 2 in the morning.

**Q. Would you describe that to me? How did you learn it? Where were you when you learned it?**

A. I believe I was in Bart McDade's office, and he mentioned that Barclays had -- they had had contact with Barclays and Barclays was interested -- "they" meaning Dick himself, Skip and Barclays was interested in pursuing an acquisition of the U.S. businesses of Lehman Brothers.

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Q. Did he tell you anything more than that? Who called who or anything that was said in the conversation?

A. No, nothing more than that.

Q. Who else was present when you learned this from Mr. McDade on Sunday night?

A. I don't recall specifically, but probably Mike Gelband.

Q. I should tell you, and I should have said this upfront, I don't want you, please, to speculate during the day.

A. Okay.

Q. Once or twice you've answered by saying "probably," and it's common usage, but if you can give me your memory of things, as you have been, tell me when you'd have to speculate, okay --

A. Okay.

Q. -- so the record will be clear.

So do you know if Mr. Gelband was in that conversation?

A. I don't recall.

Q. Now, do you know if that conversation took place before or after Lehman filed for

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bankruptcy protection?

A. I don't remember exactly when the firm filed, but that's a matter of record, so ...

Q. Well, do you know, do you remember when you learned, first learned the firm was going to file? Withdrawn.

Did you know before the firm filed that it was going to do so?

A. Yes.

Q. When did you learn, first learn that the firm was going to file?

A. After the board meeting on Sunday night, approximately 8 o'clock.

Q. Did you attend that board meeting?

A. No.

Q. From whom did you learn the substance of the board meeting?

A. I don't recall.

Q. And the conversation with Mr. McDade about renewed negotiations with Barclays, did it take place after the board meeting?

A. Yes.

Q. Did Mr. McDade ask you to do anything in connection with these renewed negotiations?

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A. No.

Q. Did anyone ask you to do anything in connection with these new renewed negotiations?

A. No.

Q. Did there come a time when you learned the negotiations --

A. I'm sorry.

Q. Beg your pardon. Go ahead.

A. No, not that evening.

Q. Not that evening, okay.

Did come a time where you were asked to perform some tasks or do something in connection with the negotiations?

A. Yes.

Q. And when did that happen?

A. Late Thursday night, the 18th of September.

Q. I'm coming there.

Did there come a time when you learned there was an agreement reached between Lehman and Barclays concerning the sale of Lehman assets to Barclays?

A. Yes.

Q. When did you learn that?

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A. Sometime Tuesday.

Q. From whom did you learn that?

A. I don't recall.

Q. Did you learn whether that agreement was reduced to a writing?

A. No.

Q. Have you ever seen any -- the written agreement, have you ever seen a written agreement between Lehman and Barclays concerning the asset sale?

A. No.

Q. So you learn on maybe the Tuesday that there's a deal between Lehman and Barclays, and then -- and on late Thursday night you're asked to participate in some way.

How are you spending your time between the Tuesday and Thursday?

A. I'm spending, between really Sunday night and Thursday, I was spending all my time attempting to help coordinate the risk reduction and risk management of the firm so it could survive for a few days to get to closure.

Q. Now, did those -- now I'm in the period from, that you just described, from the

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**Sunday up until Thursday.**

A. Uh-huh.

**Q. Are you working with any people from Barclays in connection with those activities?**

A. I don't recall specifically working with Barclays employees. Just Lehman employees.

**Q. Were you in communications with Barclays employees?**

A. Not directly. I would have communicated to our finance staff and they would have communicated to Barclays.

**Q. And who on the finance staff?**

A. Ian Lowitt, Paolo Tonucci.

**Q. Did you also deal with Martin Kelly?**

A. Maybe once, twice.

**Q. When you learned about a deal between Lehman and Barclays having been concluded, what was your understanding of the nature of the deal?**

A. That I was -- that it was going to be an asset purchase deal and that they were going to purchase some amount of assets and assume the employees of Lehman, some of the limited obligations of Lehman Brothers.

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**Q. Did you have an understanding of the asset components that were going to be purchased?**

A. No.

**Q. Did you ever learn what asset components were going to be purchased?**

A. Are you specifically asking about the deal that was struck on that Tuesday?

**Q. Yes.**

A. No.

No, let me be more specific.

**Q. Sure.**

A. I got an e-mail that said they were going to purchase the building and a pool of other broadly defined assets.

**Q. Who did you get that e-mail from?**

A. Ajay Nagpal.

**Q. Could you spell that so we have it in the record, please?**

A. A-J-A-Y N-A-G-P-A-L.

**Q. What understanding did you have of the constituent parts of the pool of the defined assets apart from the building?**

A. None.

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**Q. Did you have an understanding who the principal negotiators for Lehman of that transaction were?**

A. I understood it to be Mark Shafir, Skip McGee.

**Q. Did Mr. McDade have any role in those negotiations, to your understanding?**

A. I believe he did.

**Q. But you wouldn't describe him as one of the principal negotiators?**

A. He might have been.

**Q. Do you have a reason to think he might have been? Is it that --**

A. He was the president of the firm.

**Q. But other than his title, do you have a basis for thinking he might have been one of the principal negotiators?**

A. No.

**Q. Did you talk to Shafir about the negotiations?**

A. No.

**Q. Did you talk to McGee about the negotiations?**

A. No.

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**Q. Did you have an understanding of the nature of the liabilities that Barclays was going to assume under the agreement?**

A. Not at the time.

**Q. Did there come a time when you did gain an understanding of the liabilities Barclays was going to assume under the agreement?**

A. A very cursory understanding on Friday.

**Q. That's on Friday, the 19th?**

A. Correct.

**Q. From whom did you get that understanding?**

A. Paolo Tonucci.

**Q. What did Mr. Tonucci tell you in that regard?**

A. That there were two categories. One was assumption of certain trade liabilities and the other was the assumption of compensation liabilities, and that they together totaled somewhere over \$4 billion.

**Q. Did you talk to anyone other than Mr. Tonucci about these assumed liabilities that**



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**totaled somewhere over \$4 billion?**

A. During Friday, the amount of those liabilities were referenced several times by Paolo, who was attempting to accurately estimate them, and by Barclays in their description of the deal later in the afternoon.

**Q. Let's go back to the earlier part of the week. I swear I'm getting to Thursday and Friday.**

A. That's all right.

**Q. Now I'm still sort of in the early part of the week.**

**Were you asked to be involved in any assessment of the value of the pool of securities that was to be sold?**

A. No.

**Q. Did you ever come to understand that the agreement between Lehman and Barclays included a loss, an overall loss against the amount at which those assets were carried on Lehman's books?**

A. No.

**Q. Did you ever at any time have an understanding that that agreement involved a**

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**discount of any kind given to Barclays against the amount shown on Lehman's books of those assets?**

A. No.

**Q. Apart from your counsel and counsel from Mr. Hume's firm, have you spoken to anybody about that topic?**

A. No.

**Q. When you learned about the sale of a pool of assets, and again, apart from the real estate on Tuesday, did you have an understanding it was to be sold at book value?**

A. I didn't have an understanding one way or the other.

**Q. So on the Monday, the Tuesday, the Wednesday and during the day on Thursday, if I understand what we've talked about so far correctly, you're essentially involved in managing risk?**

A. Yes.

**Q. And the purpose, apart from the inherent reason for doing it --**

A. Keep the firm funded.

**Q. Did you have an understanding, while**

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**you were doing that, of how long you needed to do that? What the timetable was for things?**

A. We knew we were -- I believe they were trying to schedule a meeting with the bankruptcy court on Friday evening, Friday afternoon.

It was really a day-to-day operation.

**Q. And during that day-to-day operation, did any of your activities involve entering into or addressing repurchase agreements, repos?**

A. Some of them.

**Q. Could you describe that for me? What was the nature of your activities in connection with repos?**

A. The firm had a number, a large number of clients whose assets had been trapped under repurchase agreements in the European subsidiaries, so we spent some time trying to figure out how we were going to help solve those issues. That was a big piece of it.

And then we were also trying to shrink the matched book because it used liquidity at the firm as a way to raise liquidity, so where you would finance client positions with other client's money.

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**Q. Financing of client positions with other client's money; is that what you're talking about when you talk about the matched book?**

A. Yes.

**Q. And by shrinking the matched book, you're reducing that level of activity of --**

A. Yes.

**Q. -- using --**

A. And you're -- it would -- I was told it would free up liquidity.

**Q. And did you have any involvement, sir, in connection with the Repurchase Agreement that Lehman had with the Fed?**

A. Only -- my only involvement there was I was at the Fed when they told us Sunday evening that they would lend us money to pay back the tri-party repo lenders the following morning.

**Q. And did Lehman enter into a Repurchase Agreement with the Fed for that purpose, do you know?**

A. Yes, they did.

**Q. Were any of your activities devoted to**

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the making of that Repurchase Agreement with the Fed?

A. No.

**Q. Did there come a time when the Fed made it known it wanted to come out of that Repurchase Agreement, to your knowledge?**

A. Yes.

**Q. Describe to me how you came to learn that.**

A. I don't recall specifically who told me.

**Q. As a general matter, tell me what you remember about learning that the Fed wanted to get out of the Repurchase Agreement with Lehman?**

A. At some point on Wednesday, the Fed said that they wanted to get paid back, I believe it was Wednesday, and Lehman had to figure out how to arrange alternative financing, and there was only one party that would provide that financing and that was Barclays.

**Q. And what did you do in connection with those activities, if anything?**

A. I was not a repo expert. I didn't -- I was not -- I'm not a repo expert. I did not

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participate in those.

**Q. How did you learn about those activities? From whom?**

A. I don't recall specifically.

**Q. Do you have any general recollection?**

A. Probably the finance staff.

**Q. And that would be Tonucci?**

A. Ian Lowitt or Tonucci, one or the other.

MR. GAFFEY: Can we take a five-minute break?

THE WITNESS: Sure.

(Recess; Time Noted: 10:21 A.M.)

(Time Noted: 10:29 A.M.)

BY MR. GAFFEY:

**Q. In a question I asked you a little while ago, Mr. Kirk, you clarified by saying, "You mean the agreement made on Tuesday?" Did there come a point where you learned that the deal had changed?**

A. Friday.

**Q. Okay. Here we are. Tell me about Friday.**

**Actually, let me just back up. I**

**HIGHLY CONFIDENTIAL - A. KIRK**  
think you also told me there was a conversation late on Thursday night that began your Friday activities?

A. Yes.

**Q. Okay. Let's talk about that one first. Who's the conversation with, where are you, and what's the content of the conversation?**

A. I'm at home. I get a call from Bart McDade. He informs me that Mark Shafir has left Lehman Brothers and that he needs some help wrapping up the Barclays deal the following day.

**Q. Had Shafir left on the Thursday?**

A. I believe so.

**Q. You described Shafir as one of the principal negotiators. As of the Thursday, to your knowledge, has he now gone?**

A. Yes.

**Q. Did McDade have anything to say about that topic?**

A. He said he went -- he quit and he went to work at Citigroup.

**Q. Other than telling you that Shafir had quit and gone to work at Citigroup, did Mr. McDade have anything to say about**

**HIGHLY CONFIDENTIAL - A. KIRK**  
Mr. Shafir's departure --

A. No.

**Q. -- on this Thursday?**

A. No.

**Q. Did Mr. McDade say anything about the departure, Shafir's departure having any impact on the deal?**

A. He said that, given his departure, he would need extra help and he asked for my help.

**Q. What did he ask you to do?**

A. That evening he did not specify what he wanted me to do.

**Q. Tell me what Mr. McDade said and what you said in that conversation on Thursday night, as best you remember.**

A. He said that Mark Shafir has quit, gone to Citigroup, I need some help wrapping this up tomorrow, can you help me, I said yes.

**Q. That's the entire conversation as you remember it?**

A. Yes.

**Q. Did you ask him what he needed you to do?**

A. I think I asked him, Do you want me to

1 HIGHLY CONFIDENTIAL - A. KIRK  
2 come in the office tonight? He said no, he was  
3 already home. I said, What time do you want me  
4 to come in the morning? And he said, you'll get  
5 an e-mail about an early morning meeting.

6 Q. Did you speak to anyone else that  
7 Thursday night about the deal after you spoke to  
8 Mr. McDade?

9 A. Not that I recall.

10 Q. So let's just get through the rest of  
11 Thursday night, okay? After you have the  
12 conversation with Mr. McDade, he says he needs  
13 your help, there will be an early morning  
14 meeting.

15 Did you do anything else with respect  
16 to the transaction on the Thursday night?

17 A. I don't recall specifically or  
18 generally.

19 Q. On the Thursday, sir -- I'll show you  
20 a document about this in a second -- do you  
21 recall reaching out to others in the firm,  
22 including Kaushik Amin and Gerald Donini and  
23 Eric Felder, to ask them to put together  
24 information to -- that would be necessary to  
25 portray a fire sale liquidation of the

1 HIGHLY CONFIDENTIAL - A. KIRK  
2 securities?

3 A. I may have done so by e-mail.

4 Q. Okay. I'll show you the e-mail, but  
5 first, if you don't mind, what's your  
6 independent recollection of that, if you have  
7 any?

8 A. My independent recollection is that I  
9 got an e-mail for a scheduled meeting the  
10 following day and I got a request, I didn't  
11 recall when it was specifically, to help  
12 organize a valuation exercise on behalf of Barry  
13 Ridings. I didn't recall whether that was  
14 Thursday night or Friday morning.

15 Q. And who is Barry Ridings?

16 A. A Lazard restructuring banker hired by  
17 the firm to testify in bankruptcy court.

18 Q. And who made this request of you?

19 A. I don't recall specifically who asked  
20 me to do that.

21 Q. I'm showing you, Mr. Kirk, what has  
22 been marked at a prior deposition as Exhibit 3  
23 an e-mail from you to an address  
24 4955214@archwireless.net. Is that your wireless  
25 account?

1 HIGHLY CONFIDENTIAL - A. KIRK

2 A. I believe we've determined that was a  
3 wireless account that was used in the late '90s  
4 when there were wireless pagers, if you recall  
5 those devices.

6 Q. Okay. Uh-huh.

7 A. But had been inoperative but still  
8 alive in the system.

9 Q. Okay. You're about to solve one of  
10 the great mysteries of this case.

11 A. Yeah, we had --

12 Q. Did you have that account? Are you  
13 sending it to your home e-mail?

14 A. I don't -- no, this is auto-forwarded  
15 by the computers.

16 Q. Okay.

17 A. So like they auto-forward to your  
18 BlackBerry, these are things that auto-forward  
19 from the --

20 Q. You would love it right now if I said  
21 I have nothing further, but that wasn't the key  
22 question, so let me go to the exhibit that I  
23 showed you.

24 A. We had to ask ourselves the same  
25 question when we saw this.

1 HIGHLY CONFIDENTIAL - A. KIRK

2 Q. Okay. Take a minute to look through  
3 what was marked as Exhibit 3, sir. I have a  
4 couple questions for you about it.  
5 (Document review.)

6 A. Okay.

7 Q. In this, who is Daniel Flores, the man  
8 from whom the underlying e-mail is sent?

9 A. I believe Daniel worked for Mark  
10 Shapiro. It's indicated he worked in the  
11 restructuring group that was run by a fellow  
12 named Mark Shapiro at Lehman.

13 Q. And in the e-mail, you see that  
14 Mr. Flores recounts, "Alex Kirk suggested we  
15 contact each of you to help us understand on a  
16 theoretical basis what would happen in a fire  
17 sale liquidation of the securities that are  
18 being transferred to Barclays as part of the  
19 proposed transaction."

20 Did you have a conversation or  
21 communication with Mr. Flores about that topic?

22 A. This indicates I must have.

23 Q. Apart from seeing it written on this  
24 e-mail, do you have any recollection?

25 A. I don't recall.

1 HIGHLY CONFIDENTIAL - A. KIRK  
2 **Q. Does this e-mail refresh your**  
3 **recollection in any way of a communication with**  
4 **Mr. Flores about that topic?**

5 A. Again, I assume that I must have  
6 talked to him.

7 **Q. But again, sir, apart from seeing it**  
8 **on the page in front of you, do you have a basis**  
9 **for that assumption?**

10 A. No.

11 **Q. You said that that was -- well, let me**  
12 **continue down into Mr. Flores' e-mail where he**  
13 **talks about, "We will be leaving on your desks a**  
14 **list of the top 100 positions in each of your**  
15 **area's expertise." Did that exercise take**  
16 **place, to your knowledge?**

17 A. Yes, I believe it did.

18 **Q. And what was the result of the**  
19 **exercise? Was there a fire sale liquidation**  
20 **scenario put together?**

21 A. So these positions were delivered to  
22 each of the recipients of this e-mail, Kaushik  
23 Amin, Charlie Spero, Eric Felder, Gerry Donini,  
24 were the various business heads in charge of  
25 parts of fixed income or equities, and they

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2 determine in any comprehensive way the values.  
3 So we adjourned the meeting with the -- with a  
4 plan that Barry Ridings would talk to each of  
5 these individuals separately closer to the end  
6 of the day when they might have a better sense.

7 **Q. Do you know if Mr. Ridings did that?**

8 A. I don't know that.

9 **Q. Did he speak to you at all?**

10 A. Not about this topic. I saw him later  
11 in the day in a meeting.

12 **Q. Let me just back up a little bit. Did**  
13 **Ridings know you were organizing this project?**

14 A. Yes.

15 **Q. Would he have known you're the contact**  
16 **guy on it?**

17 A. Yes. I probably called him and told  
18 him call these people directly.

19 **Q. Did you have any conversations that**  
20 **you recall with Mr. Ridings about the need for a**  
21 **liquidation scenario to be analyzed?**

22 A. I assume he clarified the reasoning as  
23 a test for the court.

24 **Q. When you say you assume that, what's**  
25 **the basis of that assumption?**

1 HIGHLY CONFIDENTIAL - A. KIRK  
2 would have been -- had those delivered early in  
3 the morning, and then we were attempting to have  
4 an 11 o'clock meeting to go over the findings of  
5 their -- their assumptions and analysis about  
6 the value of those positions.

7 **Q. And did that meeting take place?**

8 A. Yes, it did.

9 **Q. Were you at it?**

10 A. Yes.

11 **Q. Who was at the meeting?**

12 A. Mike Gelband, Kaushik Amin, Charlie  
13 Spero and Gerry Donini, and Daniel Flores was  
14 there as well as Gerry Reilly.

15 **Q. Was James Seery there?**

16 A. He might have been. I recall he was  
17 there.

18 **Q. You do recall he was there?**

19 A. I recall he was there.

20 **Q. Was a determination made about**  
21 **liquidation value?**

22 A. No. The data had been delivered in --  
23 the position data had been delivered in a way  
24 that, given the short period of time, a couple  
25 hours, the business heads were not able to

1 HIGHLY CONFIDENTIAL - A. KIRK

2 A. I vaguely recall having a conversation  
3 with him.

4 **Q. Let's go to the early morning of**  
5 **Friday, the 19th. You spoke a moment ago about**  
6 **getting a call from Mr. McDade. Shafir's quit.**  
7 **He asked for your help, can you come to meet**  
8 **with him in the morning. Did you do that?**

9 A. Yes.

10 **Q. And where was the meeting?**

11 A. It was a -- I believe it was in my  
12 office.

13 **Q. In your office, sir?**

14 A. Yes.

15 **Q. Who was in attendance?**

16 A. Ian Lowitt, Chris O'Meara, Gerry  
17 Reilly, Paolo Tonucci. I think that was it.

18 **Q. Was Mr. McDade there?**

19 A. I don't believe, no, I don't believe  
20 he was there.

21 **Q. Now, in your conversation with**  
22 **Mr. McDade the night before, he had told you**  
23 **Shafir quit, he told you he needed your help,**  
24 **you offered to come in, he said come in in the**  
25 **morning, if I remember your testimony right, and**



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that's not what governs, that's basically the topics you covered with McDade on Thursday night.

So here you are in a meeting with Lowitt, O'Meara, Reilly and Tonucci. Do you learn more at the meeting about the nature of the help that you're going to have to give?

A. They broadly outlined the first transaction. That was a quick summary. Then we discussed an issue that had come up earlier that morning around JPMorgan as our clearing bank shutting down Lehman's DTC account and what effect that would have on the transaction as planned.

**Q. Now, you referred to -- you said they broadly outlined the first transaction. By the Friday morning, is it your understanding there's a second transaction, a subsequent transaction?**

A. By the time we had this meeting --

**Q. Uh-huh.**

A. -- it was my view, my opinion, that there would have to be a reworking of the transaction because a vast majority of those securities that had been planned for transfer

**HIGHLY CONFIDENTIAL - A. KIRK**  
were held at JPMorgan. There was a -- and JPMorgan had a dispute of some sort about the transfer of the repo with Barclays, which was described to me by Mike Keegan, and in addition to that, they shut down Lehman's -- they closed down Lehman's DTC account, which led me to believe that JPMorgan would not cooperate and transfer the aforementioned securities to Barclays on that Friday.

**Q. When had you spoken to Mike Keegan?**

A. I got up and I went to the office about 5 A.M. and I ran into him about 5:30 in the morning.

**Q. Had you met Mr. Keegan before?**

A. I had met him the week before during the due diligence process.

**Q. So you say "they," that's some combination of Lowitt, O'Meara, Reilly and Tonucci, broadly outlined the first transaction to give you a quick summary?**

A. Yes.

**Q. How did they summarize -- tell me what you remember about their broad outline of the first transaction, the quick summary that they**

**HIGHLY CONFIDENTIAL - A. KIRK**  
gave you.

A. They summarized it as a purchase of the building, purchase of assets, and an assumption of this 4 billion, 4 and a quarter billion dollars in liabilities.

That discussion ended very quickly because of my belief that that transaction, given what had just transpired -- what I had learned from Keegan and the action that JPMorgan had taken, that I believe that they would act as a hostile party towards the closing of this transaction and that whatever had taken place before was irrelevant.

**Q. Did Mr. Tonucci tell you anything other than there was an assumption of liabilities in an approximate amount of 4 and a quarter billion for compensation of payables?**

A. No.

**Q. Did you have any knowledge as to how that number came to be determined?**

A. No. I was not concerned with that part of the transaction.

**Q. I'm sort of away from the Friday meeting for a moment.**

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A. No.

**Q. At any point did you come to an understanding as to how those, those components of assumed liabilities came to be calculated?**

A. No. No.

**Q. When the transaction, the first transaction was outlined to you by Tonucci, O'Meara, Reilly and Lowitt, or some combination, did you have an understanding as to where the assets would come from to fund those assumed liabilities?**

A. I believe there was a schedule, one-page schedule, which I think you have, that broadly gave an asset and liability balance sheet.

**Q. Have you ever seen that schedule?**

A. Yes.

**Q. When did you first see that schedule?**

A. I believe it was that morning. It was that morning.

**Q. Apart from the schedule, did you look at any other documents that morning?**

A. No.

**Q. I'm putting before you what previously**

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**has been marked as Deposition Exhibit 19.**

A. Yes, that's the schedule.

**Q. And the schedule that you saw that morning was the one with the annotation in the upper right-hand corner "9/16/08, Final SB"?**

A. Uh-huh.

**Q. Do you remember that?**

A. Yes.

**Q. Okay. Who gave you the schedule?**

A. One of the gentleman.

**Q. Do you recall which one?**

A. No.

**Q. Did anybody tell you anything about the schedule?**

A. They briefly described it as an asset sale that was approximately this size of this characteristics of the category of assets that they were going to buy, category of liabilities that they were going to assume, including financing liabilities and the aforementioned cure payment and comp.

**Q. When you refer to the financing liabilities, are you just sort of broadly describing the liabilities opposite the**

**HIGHLY CONFIDENTIAL - A. KIRK**

**particular assets in ST borrowings, government and agencies?**

A. Yes.

**Q. The ones that add up to 33.9?**

A. Well, in addition, there's the 34.5 below that.

**Q. For collateralized short-term funding, right?**

A. Yes.

**Q. Now, did you have an understanding when you were shown this schedule of where the values for assets -- from where the values for assets were derived?**

A. I don't recall. We quickly moved on from this.

**Q. Did whoever described the schedule to you, did they give you any description of the role that any of that schedule played in the first transaction?**

A. They described it as the template for the first transaction.

**Q. And do you know who put together the schedule that was the template for the first transaction? Did they tell you that?**

**HIGHLY CONFIDENTIAL - A. KIRK**

A. No.

**Q. Did you ask?**

A. No.

**Q. Now, present at the meeting was Lowitt, O'Meara, Reilly and Tonucci. Was anybody participating by telephone?**

A. I don't recall.

**Q. Was there any participation in that Friday morning meeting by anybody from Barclays?**

A. No.

**Q. So they broadly outlined the first transaction. They tell you the problem with JPM, one of them or some combination of them.**

**What happens next in that meeting?**

A. We break up. I tell them that I'm going to go try to shepherd the valuation process that I have been asked to follow up on for this 11 o'clock meeting and that I'm going to try to arrange a meeting with the senior executives at Barclays to explain to them what my view was, that this transaction as outlined couldn't be closed on that Friday night, which they agreed with.

Oh, I tell them I'm first going to go

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**inform senior Lehman executives, Bart and Dick, of this problem.**

(Mr. Kelley confers with the witness.)

A. I'm sorry, just to clarify, my assumption about this being problem -- this transaction being problematic was agreed to. The basis for that worry was verified by or agreed to by Ian Lowitt and Paolo Tonucci in that meeting.

**Q. As I understand it, your primary activities for the week until this Friday morning meeting had been in risk management --**

A. Uh-huh.

**Q. -- had been in shrinking the matched book, keeping the firm alive so that the Friday hearing had some possibility of succeeding, is that a fair summary?**

A. Yes.

**Q. And you're called into this meeting on Friday morning and told that the transaction that's been on the table all week can't go forward because of this problem. This may seem an odd question, sir, but why are you now the guy that has to call Barclays and call senior**

1 **HIGHLY CONFIDENTIAL - A. KIRK**  
2 **management? Did you have an understanding of**  
3 **why you're the lucky winner of that**  
4 **responsibility?**

5 A. Because I volunteered. Yeah, I --

6 **Q. Did you have --**

7 A. Believe me, I almost had a heart  
8 attack just thinking about that.

9 (Mr. Kelley confers with the witness.)

10 A. That's true. In addition to Mark  
11 Shafir had left the firm, so ...

12 **Q. That's sort of implicit in my**  
13 **question. Why are you the guy who has to step**  
14 **up to the plate when Shafir leaves? Why not**  
15 **McGee? Why not Tonucci? Why not Lowitt?**

16 A. Because Bart trusted me.

17 **Q. So did you go and inform more senior**  
18 **Lehman executives of the issues of the problem?**

19 A. Yes.

20 **Q. Okay. Tell me about that. Who did**  
21 **you contact and what did you tell them, what did**  
22 **they say to you?**

23 A. I contacted Bart, I don't recall who  
24 else was in the meeting exactly, but I walked  
25 in, and there were others, I don't remember who

1 **HIGHLY CONFIDENTIAL - A. KIRK**  
2 **being there, or are you assuming again, because**  
3 **of his role, his title, that he might have been?**

4 A. Yes, I'm assuming because of his title  
5 he might have been.

6 **Q. But you do recall talking to McDade**  
7 **about it?**

8 A. Yes.

9 **Q. Do you recall anyone else other than**  
10 **McDade to whom you spoke?**

11 A. No.

12 **Q. And what did Mr. McDade say?**

13 A. He said we should have a sit-down with  
14 the Barclays senior team and we should explain  
15 our point of view on this ASAP.

16 **Q. And what happened next?**

17 A. We had a meeting with Bart, myself,  
18 and then it was Michael Klein, Rich Ricci, and  
19 Mike Keegan from Barclays.

20 **Q. Where was the meeting?**

21 A. It was in an office on 31 that  
22 Barclays was using as temporary space.

23 **Q. And who's there from the Lehman side**  
24 **of the table?**

25 A. Bart and I were there.

1 **HIGHLY CONFIDENTIAL - A. KIRK**

2 exactly, Fuld, most likely, that the assets and  
3 liabilities that had been assumed to be  
4 transferred in the first transaction were all  
5 held in custody or had to be cleared through  
6 JPMorgan, and because JPMorgan had taken this  
7 hostile action, there was a dispute, which I  
8 didn't understand the exact nature of, with the  
9 transfer of collateral between Barclays and --  
10 between the Fed through JPMorgan to Barclays.

11 I knew at a very high level there was  
12 a dispute between the two firms as to what  
13 collateral was accept -- what collateral was  
14 transferred and what collateral was left at  
15 JPMorgan, and I knew that JPMorgan had shut down  
16 Lehman's DTC account and failed all the  
17 settlements on that Friday, and a combination of  
18 those two pieces of information led me to  
19 believe that JPMorgan wouldn't transfer these  
20 assets on this schedule and liabilities, both  
21 sides, in any normal course.

22 **Q. And when you reported this to McDade,**  
23 **you said -- withdrawn. You said Fuld was there,**  
24 **most likely.**

25 **Do you have a recollection of him**

1 **HIGHLY CONFIDENTIAL - A. KIRK**

2 **Q. Anyone else?**

3 A. Ian was there as well, I'm pretty  
4 sure.

5 **Q. Was Tonucci there?**

6 A. I don't remember.

7 **Q. Do you recall whether or not with**  
8 **regard to which ones there were, do you recall a**  
9 **bigger meeting than that, or is this the**  
10 **assembly of people that you remember?**

11 A. It was an assembly of no more than ten  
12 people total.

13 MR. GAFFEY: Can we go off the record  
14 for a minute?

15 (Discussion off the record.)

16 (Recess; Time Noted: 10:59 A.M.)

17 (Time Noted: 11:09 A.M.)

18 BY MR. GAFFEY:

19 **Q. We were, before the break, we were at**  
20 **this Friday morning meeting, and so I want to go**  
21 **through in as much detail as I can what happened**  
22 **at that meeting and who said what.**

23 I have a general sense that the JPM  
24 problem has arisen. Did you have a sense, was  
25 there any discussion about the JPM problem being

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related in any way to the Repurchase Agreement with Barclays?

A. Yes.

**Q. Describe that for me. What was your understanding?**

A. So, to be clear, I'm not an expert, was not an expert on repo, so I was learning things for the first time that day that I didn't understand how they actually worked prior to that. So I got what was a cursory as opposed to a detailed explanation of the issue, but as I understood it from the way that Mike Keegan explained it to me was that the Fed had been providing a repo for Lehman Brothers earlier in the week of approximately \$50 billion, that the Fed had made it known that they wanted to be repaid on that repo, and that Barclays had agreed to assume that repo obligation from the Fed. Without that financing the firm would have collapsed the next morning.

So the way it was explained to me was, during the transfer of those -- that loan and the collateral associated with that loan, there were many pieces of collateral that Barclays

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could not value, so they did not accept them in transfer from the Fed. And mechanically, it was explained to me the way that worked was, in a tri-party repo, the Fed transferred all of the positions to JPMorgan and then JPMorgan began transferring those positions upon the receipt of money from Barclays transferred money, and then they would transfer the positions that secured that repo.

And at some point during that process, Barclays became very uncertain as to some percentage of that collateral, I don't recall the exact amount, but it was a large number, maybe as much as, you know, 20 percent of the collateral, and when Barclays didn't accept those positions, they, by definition, just got left at JPMorgan.

They -- so JPMorgan was left with collateral that they were not comfortable with but Barclays would not accept, so -- and JPMorgan, I guess they attempted to negotiate but couldn't get that negotiation done.

**Q. Who was the "they" who attempted to negotiate?**

**HIGHLY CONFIDENTIAL - A. KIRK**

A. That JPMorgan and Barclays attempted to negotiate, but they couldn't complete a negotiation for a transfer of that collateral.

**Q. And when you say Keegan's explanation, I take it you're talking about the conversation you had with Keegan before the meeting?**

A. Yes.

**Q. Okay.**

A. The 5:30 in the morning.

**Q. And did Keegan give you any level of detail about why Barclays was uncertain about some percentage of that collateral?**

A. It was collateral that they didn't -- was either they didn't have the expertise to value or was not transparent, meaning that there were financing vehicles that Lehman set up that went into the repo that you couldn't look through to what was in those financing vehicles.

**Q. And did Mr. Keegan give you any information about what that collateral was, what type of securities?**

A. He didn't know.

**Q. Well --**

A. In some cases he didn't know. In

**HIGHLY CONFIDENTIAL - A. KIRK**

other cases it was, yes, it was illiquid and either high-yield or defaulted or consumer mortgage securities that were the ones he could identify that were very hard to value.

**Q. I'm hearing this in two categories, and I want to be sure you and I are on the same page. There's a component of this collateral that's hard to value and there's a component that is not transparent, which may also make it hard to value --**

A. Yes.

**Q. -- but some of it's transparent and hard to value?**

A. Yes.

**Q. Okay. Did he identify any particular categories of hard-to-value securities? I get it, high-yield or mortgage-backed, but did he --**

A. Distressed.

**Q. Did he use the term "racers" at all?**

A. That was the non-transparent category.

**Q. Okay. Tell me what Mr. Keegan said to you about racers.**

A. "What are they?"

**Q. Anything else?**



**HIGHLY CONFIDENTIAL - A. KIRK**

A. "And what's in them?" I said, "I don't know." I then went and -- Paolo Tonucci, I directed him to Paolo, who would be able to tell him what was in those various financing vehicles.

Q. Do you know what Paolo Tonucci then spoke to Mr. Keegan about?

A. I don't know.

Q. Did Mr. Keegan say anything else about racers other than he didn't know what they were?

A. He asked how would I find out.

Q. Did Mr. Keegan say anything to you that, in sum or substance, compared the assets that Barclays had agreed to buy in the first transaction, to use your term, and the assets that were in the repo that were the subject of this transfer problem?

A. He summarized it as it was a very different and riskier category of assets.

Q. Was anyone else present when Mr. Keegan and you had this early morning conversation?

A. No.

Q. Did you understand from Mr. Keegan, in

**HIGHLY CONFIDENTIAL - A. KIRK**

sum or substance, whether he had spoken to others at Lehman about this problem by the time he had spoke to you?

A. I understood I was the first person he had explained it to, at Lehman that he had explained it to.

Q. When you spoke to him and about this topic, did you let him know that there was a Friday meeting planned with -- that you had been asked to come to an early morning meeting by Mr. McDade?

A. Yes.

Q. And did you tell him you'd get back to him after that meeting to see if there was a solution to this problem?

A. Yes.

Q. So, in the course of that meeting, now we've got the JPM issue, it's been identified, you've had the first transaction outlined to you broadly, the JPM problem --

A. Right.

Q. -- has been also described. What happens next?

A. I'm sorry, so where -- what time of

**HIGHLY CONFIDENTIAL - A. KIRK**

day are we now?

Q. I'm sorry. I've got you back at the Friday meeting with -- we're back at the Friday meeting with Bart, yourself, Klein --

A. Okay.

Q. -- Ricci and Keegan.

A. Yeah.

Q. Okay.

A. So at that meeting I walk through -- I summarized the issues, as I understand them, for this dispute with Barclays. I inform Barclays that those executives -- that JPMorgan had shut down Lehman's DTC account, and I made the supposition that that would make it impossible to complete the transaction as contemplated.

Q. And what, if anything, did Mr. McDade have to say about those topics?

A. He said he agreed with me.

Q. Did you speak first in outlining the issues?

A. Yes.

Q. And how did Klein, Ricci and Keegan or any combination of those three men react to that news?

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A. There was some question as to, well, what do we do now? I suggested that the only reasonable course of action would be to proceed with the transaction substituting the repo assets, the assets that Barclays had lent against, for all the other securities that had been contemplated in the transaction and leave the rest of the transaction as was.

Q. So if I understand this -- I want to make sure I understand this correctly. Your suggestion was to take the assets that were the subject of the first transaction roughly outlined in that schedule?

A. Yeah.

Q. And instead of transferring that body of assets, transfer the body of assets that are in the repo, correct?

A. Yes.

Q. Maybe I'm not understanding. Is the problem here, doesn't it involve the assets that are in the repo? Hasn't Mr. Keegan told you that Barclays is uncertain about some components of the repo collateral?

A. So, again, the issue was that it was



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my view that JPMorgan would not transfer one dollar of one asset unless they got whatever they wanted in a negotiation from Barclays or anybody else, and even then they wouldn't -- it didn't appear that they would do anything but be hostile, having shut down our DTC account, which is a, I mean, that's a colossal nightmare. You know, you've got tens of billions of dollars of securities supposed to settle a regular way that you've been transacting with your clients, and every single one of them fails -- both sides, buys and sells.

**Q. How is JPM in a position to shut down Lehman's?**

A. They're our clearing bank.  
So it was, again, my supposition, which was confirmed by, you know, the senior finance staff and Bart and then finally the Barclays guys, that, you know, JPMorgan should be viewed as not going to cooperate. And Barclays was attempting to reach JPMorgan and never got a return call, was my understanding. I was told that by probably Gerard LaRocca or Keegan, one of them, and hence, you know, the

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only assets that could participate in any way in this transfer were ones that Barclays had held in custody at their clearing bank, Bank of New York, and potentially any assets at Lehman that were unencumbered and were held away from JPMorgan.

**Q. So, again, forgive me if I'm thick here, but is the problem with JPMorgan -- withdrawn.**

**When you talk about the assets that Barclays had at Bank of New York, those were assets within the repo?**

A. Yes.

**Q. Within the Barclays repo, yes?**

A. Yes.

**Q. Do you know the amount, the value of the assets that were at Bank of New York within the Barclays repo?**

A. I didn't know that. I didn't know the amount or the value of those assets.

**Q. Okay. And again, so we're clear, you didn't know at the time or you don't remember now, or both?**

A. I didn't know at the time.

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**Q. Okay. And the problem with JPM refusing to transfer assets over, is that away from the repo?**

A. Yes.

**Q. Okay. So your suggestion is to focus on the repo as the body of assets that can be transferred to Barclays?**

A. Right.

**Q. Plus unencumbered, other unencumbered assets?**

A. That were not held or cleared through JPMorgan.

**Q. That are away from JPMorgan?**

A. Correct.

**Q. Now, did you have an idea then of what the value of that total package could be?**

A. No.

**Q. So you've made --**

A. Because I wasn't clear on what actually got transferred and what didn't get transferred. I knew broadly the size of the Fed repo. I didn't know what the disputed amount was or the assets.

**Q. I just need to follow up a bit on the**

HIGHLY CONFIDENTIAL - A. KIRK  
disputed amount.

A. Yeah.

**Q. I'm trying to be as clear as I can --**

A. Yeah.

**Q. -- as to what's the JPM problem and how much of that is --**

A. Right.

**Q. -- whether that's -- we've established the JPM problem is away from the repo, right?**

A. The JPM problem vis-a-vis Lehman Brothers was away from the repo, that is correct.

**Q. But vis-a-vis Barclays, it was not away from the repo?**

A. My understanding was there was a dispute about Barclays not accepting all the collateral out of the Fed, only some of it, and that collateral they didn't accept got left behind or, by definition, stays at the clearing bank, which was JPMorgan. JPMorgan clears for the Fed.

**Q. And I think you had an -- a rough idea of what percentage of that. It was some percentage. It could have been as much as 20**

1 **HIGHLY CONFIDENTIAL - A. KIRK**  
2 percent that Barclays would not accept, yes?

3 A. Yes.

4 **Q. Did you have a sense of a dollar**  
5 **amount of what was net of the amount that**  
6 **Barclays would not accept?**

7 A. It was somewhere in the 40s.

8 **Q. And when you're talking about the**  
9 **amount of the repo, are you talking about the**  
10 **amount that was financed or the total collateral**  
11 **as pledged? Withdrawn.**

12 **You told me you're not an expert in**  
13 **repos --**

14 A. Yeah.

15 **Q. -- and neither am I, but I understand**  
16 **there's a haircut.**

17 A. Yeah, I think I was talking about the  
18 amount financed, but I'm not -- I'm sketchy on  
19 that.

20 **Q. So you make this proposal. McDade**  
21 **says he thinks you're right. What's the**  
22 **reaction from Klein, Ricci and Keegan?**

23 A. Ricci says -- there was some  
24 discussion, I don't recall the specifics of it,  
25 but Ricci then I recall specifically says, I

1 **HIGHLY CONFIDENTIAL - A. KIRK**  
2 believe he's right. We have to change course.

3 **Q. I know it's a long time ago, but just**  
4 **given that phrase, is that -- are you quoting**  
5 **him? Are you summarizing him?**

6 A. I'm summarizing him. I was under a  
7 tremendous amount of pressure and stress, so my  
8 memory is a little fuzzy from that.

9 **Q. Sure.**

10 A. At one point in this meeting, Mike  
11 Klein looked at me and said, "Do you need a  
12 doctor?"

13 **Q. Really?**

14 A. Yeah.

15 **Q. Well, you're kind of a last-minute**  
16 **volunteer in this thing, you know?**

17 A. Yeah. Story of my life.

18 **Q. What did Klein say?**

19 A. He said, okay, let's get to it.

20 **Q. And did Keegan say anything?**

21 A. He said, well, we haven't analyzed  
22 this collateral so we don't know what it's  
23 worth. How are we going to figure out what it's  
24 worth? And we said we had started a process  
25 with these large positions.

1 **HIGHLY CONFIDENTIAL - A. KIRK**  
2 The problem turned out to be not only  
3 was the data delivered in a not usable fashion  
4 to the heads of the desk, but it was a different  
5 set of securities. So we had to -- it was  
6 determined that the finance staff of Lehman  
7 Brothers needed to work with the finance staff  
8 at Barclays and get a list of everything that  
9 was in their repo line, and then take that off  
10 the systems and try to put it together in a way  
11 that could be delivered to the various trading  
12 desks to try to put some value on it.

13 **Q. When you referred before to, you know,**  
14 **we had started that process, was that a -- were**  
15 **you referring --**

16 A. From the night of the --

17 **Q. Yes.**

18 A. -- Daniel Flores' e-mail.

19 **Q. That's the one that refers to trying**  
20 **to come up with fire-sale-type prices?**

21 A. Yes.

22 **Q. What in your mind was the connection**  
23 **between the, what I'll call the fire sale**  
24 **analysis and the problem you were dealing with**  
25 **on Friday? I'm not sure I'm clear on that.**

1 **HIGHLY CONFIDENTIAL - A. KIRK**

2 A. Only that we had -- that I could tell  
3 the Barclays guys that we were already trying to  
4 value some collateral and relative to the marks.  
5 The -- Lehman suffered, you know, two issues  
6 that week around valuations. One was the  
7 markets were unbelievably volatile and  
8 incredibly illiquid, and that we were a less  
9 than desirable counterparty for our -- so that  
10 we had been, when we had been liquidating  
11 collateral, we had been losing a lot of money,  
12 and in addition to that, a smaller problem was,  
13 you know, since the firm had filed for  
14 bankruptcy, not every person was showing up to  
15 work.

16 **Q. Now, the fire sale liquidation**  
17 **analysis, the top 100 positions there, did**  
18 **you -- are you saying that some of those might**  
19 **have been in the repo?**

20 A. Yeah, but we didn't know which ones.

21 **Q. You didn't know?**

22 A. We had no idea.

23 **Q. That's not, so we're clear, the 100**  
24 **positions we're talking about there is not with**  
25 **direct reference to what was in the repo?**

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A. No, not at all. We didn't know we had this problem Thursday night.

**Q. What's the tone of the Friday meeting? I know it's tense and Klein says do you need a doctor, but are people angry? Are they calm? Are they -- what's the temperature in this meeting?**

A. Anxious. It's very, very anxious. How are we going to be able to try to get anything over the goal line by 4 o'clock this afternoon, and if we don't, you we don't believe we can survive the weekend.

**Q. And why 4 o'clock that afternoon? Was that the bankruptcy hearing?**

A. Yeah, that was the bankruptcy hearing, the scheduled bankruptcy hearing.

**Q. Is there any discussion in this meeting about what, if anything, needs to be said to the bankruptcy court about this event, these events?**

A. That it would have to be explained. This transaction was very different than what had been previewed two days before, and it would have to be explained why it came up.

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**Q. Was there any discussion about the consideration Barclays was to give in the agreement also changing?**

A. Besides the amount, no.

**Q. Well --**

A. Meaning besides the fact that it wasn't 72 million, you know, the attempt was to get it so that the assets and liabilities would balance.

**Q. And the 72 million, you're looking at Exhibit 19, yeah?**

A. Yes.

**Q. That financial schedule.**

**Was there any discussion of the compensation and cure components of the assumed liabilities changing?**

A. Not at that meeting.

**Q. Did you at some point hear a discussion about the compensation and cure components changing?**

A. At some point late in the day, there was a -- not on the compensation, there was no discussion of compensation. Ian -- not Ian, Paolo was attempting to figure out a better

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**Q. Who said it would have to be explained?**

A. Barry -- in that meeting -- I apologize, some of these meetings are blurs.

**Q. Sure.**

A. But at some point during the day, Barry Ridings, I was in a meeting with him, I believe it was maybe at the tail-end of this meeting, he came in and, you know, he listened to this explanation again and then he said, okay, we're going to have to be able to explain this.

**Q. And did the Barclays folks in the meeting -- and by that, I'm including Klein here, Klein, Ricci, Keegan -- did they have anything to say about whether and when this would have to be explained to the court?**

A. No, they were taking Barry's lead.

**Q. Now --**

A. We all knew that there was a court hearing scheduled at 4 o'clock.

**Q. Why do you describe this as a very different agreement?**

A. The list of assets is different.

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estimate. I think they had always continually worked on it, but they were trying to figure a better estimate.

Ian -- I remember Paolo coming into a meeting I was in, I don't remember who it was with, but he came in and said I'm working through the cure payments to try to see if there's some wiggle room there, so to speak, in terms of what is that estimate. I never got a -- I was -- that was not part of the transaction I was concerning myself with. I was supposed to try to shepherd along as best as possible in this incredible short timeframe some valuation work that we could get to on the assets.

**Q. Wiggle room up or wiggle room down, or both?**

A. I don't -- he didn't mention it one way or another. Some variance I guess is a better way to put it. I don't remember whether it was higher or lower.

**Q. In the Friday meeting with McDade and you and Klein and Ricci and Keegan, was there any discussion about Lehman defaulting on the**

1 **HIGHLY CONFIDENTIAL - A. KIRK**  
2 **repo?**

3 A. No.

4 **Q. Were you ever involved in any**  
5 **discussion concerning the topic of Lehman**  
6 **defaulting on the repo?**

7 A. Not a discussion. I received an  
8 e-mail that referenced it, but --

9 **Q. From whom did you receive the e-mail?**

10 A. I don't have it in front of me.

11 You've got it, Gerry Reilly. That was  
12 a couple days earlier when I wasn't involved, so  
13 I didn't pay attention to it.

14 **Q. Do you recall that as an e-mail where**  
15 **Reilly proposed defaulting on the repo was the**  
16 **best way to deliver the bulk discount to**  
17 **Barclays?**

18 A. I would have to look at it again.

19 **Q. We'll get to that a little later.**

20 A. Fine.

21 **Q. Is there any discussion in the Friday**  
22 **meeting of that, of using the repo as a means of**  
23 **delivering a haircut to Barclays?**

24 A. No.

25 **Q. Was there any discussion in the Friday**

1 **HIGHLY CONFIDENTIAL - A. KIRK**

2 **meeting of terminating the repo?**

3 A. I recall a discussion, I don't  
4 remember who was in the meeting, but with  
5 Barclays that if we couldn't get to closure that  
6 day --

7 **Q. That Friday?**

8 A. That Friday.

9 **Q. Okay.**

10 A. -- it was likely they would terminate  
11 the repo.

12 **Q. Do you know if at any point Barclays**  
13 **did terminate the repo?**

14 A. I don't know the answer to that.

15 **Q. When the Barclays folks said if they**  
16 **couldn't get to closure on Friday, they would**  
17 **have to terminate the repo, was there any**  
18 **reaction from the Lehman folks to that**  
19 **statement?**

20 A. We understood they had to do what was  
21 within their rights and what they felt was  
22 appropriate.

23 **Q. Who said that?**

24 A. McDade.

25 **Q. I'm going to show you, Mr. Kirk,**

1 **HIGHLY CONFIDENTIAL - A. KIRK**  
2 **what's previously been marked as Exhibit 21.**  
3 **Take a moment to look through the document.**  
4 **(Document review.)**

5 A. Okay.

6 **Q. Is that the document, the e-mail you**  
7 **referred to a moment ago?**

8 A. Yes.

9 **Q. At the very bottom of the document,**  
10 **paragraph 3, and this is within the e-mail from**  
11 **Reilly to Lowitt, Gelband, Tonucci and Kelly, is**  
12 **the following, "Not clear on the amount of block**  
13 **discount or how we make it happen. Defaulting**  
14 **on repo could be the best, as discount could be**  
15 **taken from haircut." Do you see that?**

16 A. Uh-huh.

17 **Q. You may have said something a moment**  
18 **ago about this, but let me ask you, did you have**  
19 **an understanding when you saw this e-mail of**  
20 **what it was Mr. Reilly was talking about, using**  
21 **the repo?**

22 A. No, this was before I was involved,  
23 and I was CC'd on this e-mail because of my work  
24 in the auction rate book and the prime brokerage  
25 financing at the time.

1 **HIGHLY CONFIDENTIAL - A. KIRK**

2 **Q. Okay. So the first paragraph of**  
3 **Mr. Reilly's e-mail refers to the auction rate**  
4 **book?**

5 A. Yeah.

6 **Q. And the question appears to be whether**  
7 **it's staying or going in the transaction, yes?**

8 A. Right.

9 **Q. And was it your understanding that it**  
10 **was that first question that was the reason it**  
11 **was forwarded to you, because you're in the ARS**  
12 **world?**

13 A. I had been in the ARS world in my  
14 previous job, and I assumed it was forwarded to  
15 me so they could figure out who should answer  
16 these questions, who would be most expert to  
17 answer them.

18 **Q. All right. So when you got the whole**  
19 **e-mail, including the other two questions --**

20 A. Yep.

21 **Q. -- am I fairly understanding your**  
22 **testimony that you didn't really focus on 3**  
23 **because it wasn't in your area of**  
24 **responsibility, you didn't understand it to be**  
25 **addressed to you?**



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A. As a matter of fact, my answer indicates what I did was I redirected them to people I thought could be helpful.

**Q. Okay.**

A. That's what I thought my responsibility would be.

**Q. Okay.**

A. Try to put point them in a direction.

**Q. Beg your pardon.**

And with respect to the third question, you say, "The third question is definitely for Cogs," C-O-G-S. Is that a reference to Mr. Coghlan?

A. John Coghlan, yes.

**Q. John Coghlan, okay. And why was it a question for John Coghlan?**

A. Because he was head of repo financing at the firm.

**Q. Do you know if Mr. Coghlan ever did address the third question?**

A. No idea.

**Q. Now, when you were in the Friday meeting and the topic of the repo was being discussed -- withdrawn.**

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business anymore.

**Q. Was there a reference to the -- any discussion in the Friday meeting of a discount?**

A. No, not that I recall.

**Q. Okay. So I'll summarize it just to frame my next question so you're not married to how I do this. But as I understand it, the meetings happened, you identified the JPM problem, the recommendation is made to transfer what's in the repo, and there's some issues about how to value what's in there; is that a fair summary?**

A. Yes.

**Q. Okay. And the general sense of the meeting from both sides of the table is, okay, let's go to it and try and figure this out, we have until about 4 o'clock to see if we can solve this, yes?**

A. Yes.

**Q. And Barclays says if we can't reach a resolution of that by about 4 o'clock, we may have to terminate the repo, correct?**

A. Correct.

**Q. And McDade has said if that comes to**

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**This is sent, this e-mail comes to you on Thursday?**

A. Yes.

**Q. At roughly 6:40 in the morning. Note that that's Greenwich mean time shown there.**

A. Yeah.

**Q. The next morning you're in a meeting where the repo is being discussed. Did that trigger any recollection in your mind about, you know, an e-mail discussion the prior day about using the repo as a means of making the block discount happen?**

A. No, I, you know, I get 500 e-mails a day, and during this period of time we were getting probably twice that. So ...

**Q. And when you saw a reference --**

A. I was answering all of them, so, you know, or as many of them as I could.

**Q. And also to the mysterious number that we finally identified.**

A. Yes, and then there's the mysterious number.

**Q. Now, the --**

A. I don't think the company's in

**HIGHLY CONFIDENTIAL - A. KIRK**

**be, you know, you have to do what you have to do?**

A. Those are your rights.

**Q. And you don't know if the repo was in fact ever terminated by Barclays?**

A. I don't know that.

**Q. Okay. So now what happens? Does the meeting end or is there further discussion?**

A. I recall the meeting ending at that time.

**Q. And what did you do next?**

A. I went back to my office. I called the various senior executives I was going to meet with and told them that we should be getting a new schedule at some point of assets that we would have to -- they should ignore that schedule of assets and we would be getting a new schedule of assets at some point to try to put some values on.

**Q. When you say "ignore that schedule of assets," again, for clarity of record, are you talking about Exhibit 19, the original financial schedule?**

A. I'm sorry, no, I'm talking about the



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list of hundred assets that was delivered to the desk early that morning.

**Q. Got it. As part of the fire sale liquidation?**

A. Correct.

**Q. And you told them they would be getting a new list of assets. Who is it you're having these communications with?**

A. I certainly called Mike Gelband and I would have called some subset, although I don't recall who I spoke to specifically or who Mike spoke to, but I would have called either Kaushik, Charlie, Eric and Gerry.

**Q. Eric is Eric Felder?**

A. Yes.

**Q. And Gerry is Gerald Donini?**

A. Yes.

**Q. And who is Charlie? Is that Charlie Spero?**

A. Spero, uh-huh.

**Q. And did do you this on a conference call? Call them separately? In a meeting?**

A. Probably called them separately.

**Q. And what happened after that?**

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A. We waited for a deliverable schedule from finance.

**Q. Did you get one?**

A. Got one at sometime within the hour.

**Q. And from whom within finance did you receive that?**

A. I don't remember who it was.

**Q. Who within finance was in charge of that piece?**

A. It would have been some combination -- well, no, most likely it would have been Paolo, working with accounting.

**Q. And Paolo or somebody at his direction delivers a schedule. To whom is it delivered?**

A. I don't recall, but I'm sure it was instructed to be delivered directly to the people on this list that I mentioned before and myself and Mike.

**Q. And what happened with the list?**

A. We asked the senior managers to try to value the list given the market conditions that day, and generally the response was the markets are too volatile, there's too many line items, it's not possible to get this done in any

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pinpoint fashion in this timeframe, but we'll try.

**Q. And at some point was there -- did they solve that problem? Did they produce valuations?**

A. The only valuations we got was that -- I don't know what they communicated to Barry Ridings or the people working on that specific testimony.

**Q. Uh-huh.**

A. But I got the word back generally that many of these positions were so illiquid that, you know, that if we were to try to sell them, given our circumstances, you know, the bids might be down 20 percent.

**Q. Was there any discussion about looking at the valuations that Bank of New York had given to what was in the repo?**

A. We didn't have access to Bank of New York's valuations, I don't believe.

**Q. Did you talk to anyone who was familiar with how repurchase -- more familiar than you with how repurchase agreements worked to see if the collateral agent applied**

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valuations to what was held as collateral?

A. I don't recall having that specific conversation.

**Q. Do you know if anyone did have that discussion, that conversation with Barclays?**

A. They might have.

**Q. Without regard to the particular detail or even the number --**

A. Yeah.

**Q. -- you had a sense of whether by, you know, at some point on that Friday a value was put on the collateral within the repo?**

A. We at Lehman determined that the out -- the volatility of those outcomes we couldn't put a number that was specific on it. It was, given how illiquid many of the assets were, some of the assets you could value, but the markets were tremendously volatile all week.

We had had, you know, been getting closed out of -- just the prior day we got closed out of a repo, a futures position on the CME that had excess margin of, you know, \$1.6 billion.

As far as we could tell, the markets

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hadn't moved that much. Many of them were in Treasury and government bond futures, but the CME called us to inform us they had closed us out of the position and we had lost all the money in excess margin. So it was becoming very hard to value even what were deemed to be liquid securities.

**Q. Just so we're clear here, the closing out of the position by the Chicago Merc doesn't bear on the collateral that's within the repo; that's a separate event, correct?**

**A.** That is a separate event, but it was -- it was demonstrative of the volatility and the issues we were wrestling with.

**Q. And the question that I would like to put is, did Lehman come to some number, did it come to a value, a valuation of the collateral that was within the Barclays Repurchase Agreement?**

**A.** We couldn't come up with a specific value. We didn't have time. We knew we didn't -- we tried, but we couldn't, and we knew the risk was that Barclays would close out of the repo and take all that collateral, so they

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owned it, that we would end up with no excess from that collateral, and that from the very high-level work that the senior risk managers did, which we were relying upon, that we could be well out of the money, it was likely that we could be well -- we would be well out of the money in that below the haircut, which I believe, understood to be somewhere between 5 and 10 percent.

**Q. When you referred to a moment ago to one of the risks was that we would not end up with -- we would end up with no excess, what did you mean by that?**

**A.** Meaning that if Barclays closed us out of the repo, our experience had been, not just in that period of time but other cases, but certainly in that week, that their liquidation of that collateral would eat through more than the haircut they had and that they would not get back a hundred cents on the dollar. So we, Lehman, would not receive any proceeds back from the liquidation of that collateral.

**Q. What was your understanding of what would happen if there was excess collateral?**

**HIGHLY CONFIDENTIAL - A. KIRK**

**Who would keep that?**

**A.** If there was excess collateral, Lehman would keep that value.

**Q. Was that discussed at the Friday meeting, that if there was excess collateral, it would say with Lehman?**

**A.** There was not a discussion of closing out the repo and the mechanics of it.

**Q. So did there come a point on Friday where Lehman communicated to Barclays either -- where it communicated a value of the repo or it said it couldn't? What happens next vis-a-vis talking to Barclays.**

**A.** In terms of talking to Barclays, the next meeting was at some point, call it 3 o'clock in the afternoon, and they were indicating that the -- their view of the value of the repo securities was far below the stated value and below their loan value and that Lehman should attempt to find other unencumbered assets, should continue to attempt to find other unencumbered assets or the transaction may not take place.

**Q. Now, is this response from Barclays**

**HIGHLY CONFIDENTIAL - A. KIRK**

**after the Friday meeting has ended? I want to get a sense of the timeline within Friday of when Barclays does this.**

**A.** This is like 3 o'clock in the afternoon.

**Q. Does Barclays tell you, does Barclays tell Lehman how much difference has to be made up?**

**A.** No.

**Q. Is your answer that you don't remember or that you remember that they didn't?**

**A.** I remember they didn't.

**Q. So what happens now?**

**A.** We said we'll continue to look. And Ian and I had a conversation with McDade offline, just he and I. I said, I don't have any basis or enough information to argue with them about their point of view, about the value of collateral, and that the high-level work we've been doing leads me to believe that they have a reason to be nervous about this.

**Q. And what was --**

**(Mr. Kelley confers with the witness.)**

**A.** Barclays.

HIGHLY CONFIDENTIAL - A. KIRK

I'm sorry. Who is "they," he asked me. Barclays has a reason to be nervous.

Q. And did McDade give any instructions or suggestions about what to do next?

A. He said, well, make sure Ian is working on any possible unencumbered assets.

Q. So did McDade give a target of any kind of how much in unencumbered assets needed to be found?

A. At that point, all we could do was figure out what was there, and specifically I don't recall, but I do -- I do recall that the shortfall was described as, you know, billions of dollars.

Q. And by "the shortfall," you're referring to what?

A. The value that Barclays thought those repo assets were worth versus their stated value.

Q. That's the shortfall between what Barclays thought they were actually worth and the amount of the repo?

A. Yeah.

Q. So your recollection is that the

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shortfall was in the billions of dollars?

A. Yes.

Q. But do you have a recollection of whether it was between 2 billion and a gazillion billion? Is there some range you were thinking of at the time?

A. Somewhere between 2 and 5.

Q. And I'm trying to get a sense here, that's why I keep pushing at the number --

A. Yeah.

Q. -- I'm trying to get a sense here of what the project is. Is it go find every unencumbered asset we have on the one end of the possibilities, or we have to make up this specific shortfall, go find that amount at the other?

A. I didn't have the conversation. Bart had the conversation with Ian, so I didn't have that conversation specifically with him.

Q. So you don't know one way or the other whether Mr. McDade gave a target of some kind to Mr. Lowitt?

A. No, I don't know that.

Q. Your understanding from your view of

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things was there was a shortfall?

A. Yes.

Q. It wasn't Barclays was saying it wouldn't be made up out of the repo bucket?

A. Yeah.

Q. Therefore, other assets, unencumbered assets, capable of delivery had to be found?

A. Right.

Q. It was in the billions, but for your -- for the purposes of what you were doing, you didn't really need to know the number, you just needed to know the problem had --

A. Right, I was not the one who was going to solve those specific issues, so that was someone else's job.

Q. Was anyone other than Lowitt involved in the particulars of solving the problem?

A. I don't know the answer to that.

Q. Did you ever learn whether Lowitt enlisted others in the task of finding unencumbered assets?

A. No, I didn't, I didn't find out.

Q. Did there come a time when you learned whether additional value, additional

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unencumbered assets were located that could be transferred to Barclays?

A. Sometime late in the afternoon between 3 and 4, Ian came into a meeting where I was about to start a phone call with Bart, the Weil Gotshal lawyers on the phone, and I was sitting in the room with Mark Shapiro and I think it was Jim Seery and the Barclays, again, Diamond, Ricci, Klein and Keegan, and Ian came in and he said there's a -- there's a schedule of assets that we have that are unencumbered. I believe the number was \$1.9 billion of marked value.

In addition, he said there might be value in our 15c3 margin, which at the time I remember that specifically because I was like, "Gee, what's that? I've never heard of that." So he said there might be value there, I don't know yet, and there might be others.

So we said to Ian, well, get us a schedule of what's in the 1.9 billion in the -- I think he referred to it as being in the box unencumbered of these unencumbered assets, i.e., they were being financed by Lehman's unsecured debt, I believe at the time, or equity, and he

1 HIGHLY CONFIDENTIAL - A. KIRK  
2 came back with that list, showed it to myself  
3 and to Keegan and some others.

4 Keegan looked at it and said, you  
5 know, this is the -- these assets are even  
6 harder to value than what we already have. I  
7 don't even know what these are. I specifically  
8 remember there being residential mortgage  
9 residual interests and things like IOs and some  
10 very illiquid aged positions in high-yield and  
11 distressed debt. I don't specifically recall  
12 what else it was, but I do recall the list was  
13 a -- there was a reason why there was nobody  
14 financing those assets and it was because they  
15 were the most illiquid and hardest to value  
16 securities that Lehman Brothers owned on its  
17 balance sheet.

18 Q. So when Keegan said these are even  
19 harder to value than --

20 A. Yeah.

21 Q. -- than the other stuff, was he  
22 comparing this new schedule with the  
23 hard-to-value stuff in the repo?

24 A. Yes.

25 Q. And apart from saying it was hard to

1 HIGHLY CONFIDENTIAL - A. KIRK  
2 value, did Keegan have anything to say about  
3 that?

4 A. He said I don't know how I'm going to  
5 put a value on this of any positive number.

6 Q. Describe for me as best you can the  
7 conversation about that topic and who said what.

8 A. Ian came in. He delivered this -- he  
9 said -- we started the conversation with Ian  
10 delivering the list of assets, and he handed it  
11 to Keegan -- he handed out probably five copies.  
12 Most people were just staring at it saying  
13 nothing.

14 Mike looked at it and said, you know,  
15 I -- what's this asset? What's that asset? I  
16 think Ian may have answered specifically if he  
17 knew what the nature of those assets were,  
18 because in like residential mortgages you have  
19 names for deals that unless you knew that that  
20 was a residential mortgage deal, you wouldn't  
21 know what it was, you know, Sasco or things of  
22 that nature.

23 And Ian had some familiarity with  
24 the -- with what the assets were because he had  
25 been responsible for financing those sorts of

1 HIGHLY CONFIDENTIAL - A. KIRK  
2 assets or, in this case, having the equity  
3 finance the assets. And so there was some back  
4 and forth around that, and Keegan made the  
5 conclusion that he was not going to warrant any  
6 positive value on these assets from his seat,  
7 and he made that -- he sort of said that to Rich  
8 Ricci and Bob Diamond: "I can't value these. I  
9 would be very nervous about putting a positive  
10 value on them."

11 Q. So, just to kind of cut to the end of  
12 the sequence here, does Barclays agree to take  
13 these additional buckets of value, you know, the  
14 15c3 and the assets, the unencumbered assets in  
15 the box?

16 A. Yes.

17 Q. And when they make that agreement, are  
18 you present? Was that at this meeting?

19 A. Yes.

20 Q. And tell me what was said in that  
21 regard.

22 A. That, all right, we don't know what  
23 they're worth. They might be worth something,  
24 so we want them. And Bart was on the phone, he  
25 agreed -- he agreed to that, and I think that

1 HIGHLY CONFIDENTIAL - A. KIRK  
2 was the sum and the substance as to what was  
3 said about those assets.

4 Q. Was any number put on now the total  
5 value of the deal, combining the assets that  
6 were in the repo plus the 15c3 and the  
7 unencumbered assets in the box?

8 A. I don't recall a specific number being  
9 put on the -- on the deal.

10 Q. Whether you recall today what the  
11 number was, I'm going to press on this a little  
12 bit, do you recall if a number was put out  
13 there?

14 A. I'm sorry, I don't recall what --  
15 whether -- I don't recall whether there was a  
16 number specifically put out there.

17 Q. Okay. And did you have a sense after  
18 this conversation, Mr. Lowitt reports on the  
19 15c3 assets and the unencumbered assets and  
20 Keegan says, I can't value those and then the  
21 agreement's made, well, we'll take them because  
22 there may be some value, whether after that  
23 point there were additional searches for value?  
24 Do you know one way or the other?

25 A. I don't recall one way or another. I



1 HIGHLY CONFIDENTIAL - A. KIRK  
2 don't recall what the whole -- I recall 15c3. I  
3 recall this 1.9 billion because I was sitting  
4 there with the list and I said, "Gee, what is  
5 15c3?" So I recall those two. I don't recall  
6 if there were other categories discussed during  
7 that meeting.

8 Q. You said a moment ago that Lowitt,  
9 when he reported on the 15c3 piece, he put that  
10 at about 1.9 billion?

11 A. That was the marked value.

12 Q. Of marked value. And that there was  
13 some value, but -- of what was in the box, but  
14 he didn't know what it was?

15 A. It was some value in 15c3, but he  
16 didn't know how much there would be.

17 Q. So when that meeting ended, did you  
18 have, whether you remember the number or not  
19 today, did you have a sense of what the total  
20 additional value was between the 15c3 and the  
21 contents of the box?

22 A. No.

23 Q. Was there any plan made to calculate  
24 that number?

25 A. I think Ian was putting together a

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2 A. No, not adding additional value. He  
3 didn't comment on that.

4 Q. Did Klein make any recommendation in  
5 your hearing as to whether Barclays should or  
6 should not accept this deal?

7 A. Klein recommended that they accept the  
8 deal if -- when they got the additional, all the  
9 additional collateral.

10 Q. I don't mean this to be sarcastic. I  
11 just can't come up with another way of phrasing  
12 it.

13 We're looking around for all this  
14 additional value and your memory is not clear on  
15 whether there was a target or not?

16 A. Yeah.

17 Q. Framed that way, what was the project  
18 here? Was it to go find everything else and  
19 turn it over, or was it to find some, some  
20 identifiable bucket of value until Barclays  
21 said, yeah, that's enough? Do you see the  
22 distinction I'm making?

23 A. Yes, it's -- the project was the  
24 second, not the first.

25 Q. Okay. So the idea was there would be

1 HIGHLY CONFIDENTIAL - A. KIRK

2 schedule that he would communicate to Bart  
3 with -- there was a, first of all, in that  
4 discussion there was a wrap-up of this is what  
5 the deal looks like. It's got the 45 billion,  
6 it's got the, on the asset side, it's got this  
7 1.9, it's got 15c3, it may have had, you know,  
8 other components to it.

9 Bart agreed, Ian and Bart agreed that  
10 these were the components on the assets side.  
11 It had the assumed liabilities. They agreed  
12 that those were the assumed liabilities that  
13 were going to agree, I don't remember the exact  
14 numbers, and they said, okay, do we have an  
15 agreement? Barclays said yes. Ian was going to  
16 go codify that, I believe, and talk to Bart.

17 Bart was in a car with Weil lawyers on  
18 his way to bankruptcy court. That's why he  
19 wasn't in the room.

20 Q. When you say Ian was going to go away  
21 and codify that, you mean put the schedules  
22 together?

23 A. I think so, yes, that's what I mean.

24 Q. Did Mr. Klein say anything about this  
25 process adding additional value for Barclays?

1 HIGHLY CONFIDENTIAL - A. KIRK

2 some value left in Lehman; it was just a  
3 question of finding enough additional value to  
4 make Barclays still close?

5 A. Yeah. And that project was Ian's  
6 project, not mine. I wasn't -- I was an  
7 observer to this part of the process.

8 Q. What was Ian's manner in this meeting?  
9 I mean, it's a tough week for everybody, but  
10 what's his demeanor?

11 A. He hadn't slept in a week, so he was a  
12 little harried.

13 Q. Did Ian identify other potential  
14 sources of additional value that he had looked  
15 at apart from the box and 15c3?

16 A. He --

17 MR. HUME: Objection. Asked and  
18 answered.

19 Q. You can answer.

20 A. No, he, as I said, he may have, but I  
21 didn't -- I don't remember.

22 Q. You don't remember, then, any  
23 particular other sources that he might have  
24 discussed?

25 A. No, I don't.



1 HIGHLY CONFIDENTIAL - A. KIRK  
2 (Discussion off the record.)

3 BY MR. GAFFEY:

4 Q. While we're pulling a couple of  
5 documents out, Mr. Kirk, let me see if I can get  
6 the rest of, you know, the blocks of your day.

7 This meeting ends. Lowitt is given  
8 the task of codifying -- your word -- you know,  
9 getting a list together?

10 A. Yes.

11 Q. What do you do next?

12 A. I just go back to my office. Sit  
13 there silently, stunned.

14 Q. Maybe try to get some sleep?

15 A. Yeah.

16 Q. Do you have any role or involvement in  
17 this asset collection process we've been talking  
18 about after this point?

19 A. No.

20 Q. Did you go to the hearing?

21 A. No.

22 Q. Did anyone render reports to you from  
23 the hearing --

24 A. Yes.

25 Q. -- as to what was going on?

1 HIGHLY CONFIDENTIAL - A. KIRK

2 Okay. Who did that?

3 A. I got a couple e-mails from Jim Seery  
4 and I had a conversation with Jean-Francois  
5 Astier.

6 Q. And what were the, in sum and  
7 substance, what were you hearing in the reports  
8 from -- we don't have to go through this chapter  
9 and verse, but what were the nature of the  
10 reports you were getting back from the --

11 A. There was, first of all, they were --  
12 JF and Jim were trying to understand what the  
13 new deal was, so I had a conversation with JF  
14 trying to explain to him what I knew, and  
15 because they were, I believe, going to  
16 participate in a meeting with the creditors  
17 explaining this, what the deal was.

18 And then I got -- so there was some  
19 back and forth to just try to reach me on that  
20 front, and then there was -- they sent me a  
21 couple updates of, you know, Bart's proffers  
22 being read and there's cross-examination, and  
23 then ultimately the deal was done with some  
24 quotes from Judge Peck later that night.

25 Q. Did anyone --

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2 A. And then somebody called me when it  
3 was done.

4 Q. Somebody called to say the judge has  
5 approved the deal?

6 A. Yeah.

7 Q. Did you get reports from anyone that  
8 told you whether or not anyone had told the  
9 judge that this was a new transaction, different  
10 transaction?

11 A. I didn't get presented -- one early  
12 conversation I had with JF, I didn't talk to  
13 anybody directly by phone, and I just got a few  
14 cursory e-mails.

15 Q. And --

16 A. But at one point there was, you know,  
17 my understanding was there was -- and early,  
18 there was discussions before they went, you  
19 know, to court to wrap it up with various  
20 constituents. And certainly there were  
21 constituents there, Bart, Michael Klein and  
22 others, that had the details.

23 Q. Now, did you stay in your office until  
24 you heard about the --

25 A. No. No. I went home and I went to

1 HIGHLY CONFIDENTIAL - A. KIRK

2 bed sometime late that evening.

3 Q. Sometime after you heard that the deal  
4 had been approved?

5 A. No. No. I went to bed before that.  
6 Somebody woke me up out of bed.

7 Q. Did you continue to do any work or did  
8 you perform any tasks in connection with the  
9 transaction --

10 A. No.

11 Q. -- over the weekend?

12 A. Saturday I had no involvement. On  
13 Sunday, Bart asked me to come in and try to  
14 participate in the closing of the transaction at  
15 Weil Gotshal.

16 Q. Did you do that?

17 A. Yes.

18 Q. Just so I can plan a little bit for  
19 what I want to ask you after lunch break, give  
20 me an outline of what you did on the Sunday.

21 A. So we went over to Weil. We, Bart and  
22 I, were put in a room. You know, we were there  
23 as a resource as people were trying to put  
24 schedules together, et cetera.

25 An issue came up early in the morning

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around the settlement of trades on Monday and how they were going to be handled, Lehman trades, customer trades with Lehman. We tried to help work that issue out, and then we effectively became observers of this dispute between JPMorgan and Barclays, as there were many meetings held into the evening that JPMorgan came to Weil about 6 o'clock Sunday night and at the urging of the Federal Reserve and they walked through, described in very large group meetings the issues they had.

We sort of hung around and eventually were told that Barclays and JPMorgan had resolved their dispute and that the deal could go to closure.

**Q. When you say "we," are you talking about yourself and Mr. McDade?**

A. And there were others at Lehman as well.

**Q. Who else?**

A. Jim Seery was there. I called him late in the afternoon. Ian Lowitt was there. Paolo was there. A guy name Alastair Blackwell was there. Steve Berkenfeld was there. That's

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everybody I recall.

**Q. Did you learn how the dispute between JPM and Barclays had been resolved, what the terms of that resolution were?**

A. They didn't tell us.

**Q. So did anybody ask, anybody say how did this issue get resolved?**

A. Yeah, and they said it's between us and -- Barclays representatives told us -- well, I don't remember if it was the lawyer or who specifically, but a representative from Barclays said that's between Barclays and JPMorgan.

**Q. So the closing did not take place on the Sunday, correct?**

A. It eventually I think closed Monday morning, but it was one continuous -- I left at 2 A.M., and then they worked towards closing at some point in the morning prior to the markets opening.

**Q. Did you go back for the closing?**

A. No.

**Q. Do you know if any additional documentation was done to reflect the new agreement that had been reached on Friday?**

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A. Oh, I'm sure there was lots of documentation, but I'm not a lawyer so I wasn't reviewing it.

**Q. Do you know, apart from whether you read it or reviewed it, my question is do you know if a new -- a new contract or an amendment or anything else was written up that would reflect the fact that the deal had changed on Friday?**

A. I assume so. I don't -- I never saw actual evidence of it, but ...

**Q. I've asked you a couple of times when you said you've assumed. What's the basis of the assumption? The fact that it --**

A. That you couldn't proceed with a commercial transaction without it.

**Q. Do you have any factual basis to think that it was? Did you talk to anybody about it? Did you see any documents?**

A. I didn't see any documents. Certainly we were advised by Weil that the documents were in good order.

(Exhibit 316, an e-mail chain with attached balance sheet, marked for

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identification, as of this date.)

**Q. I have put before you, Mr. Kirk, a three-page document. I'll ask you to take a look through it sufficiently to tell me whether you've seen it before.**

A. Yes, I've seen it.

**Q. Did you see it at or around the time that it's -- of September 19 at 6:16 A.M.? That's the date at the top.**

A. Yes.

**Q. And was this sent to you -- was it your understanding this was sent to you to prepare for that Friday meeting we've been talking about?**

A. It was one, one of the documents that I assumed we would review.

**Q. Okay. And do you recall --**

MR. HUME: Are you marking it as an exhibit?

MR. GAFFEY: Yes, I did, Hamish. It's 316.

MR. HUME: I'm sorry.

**Q. Do you recall reviewing it at the Friday meeting?**

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A. No, I actually don't recall reviewing this.

Q. Let me just direct your attention, sir, to the third page -- well, to the second page. You'll see that that's a balance sheet that's attached to the e-mail and then referred to in the second e-mail.

A. Yes.

Q. Do you know who prepared this balance sheet?

A. I don't know specifically who prepared it, but it would have been prepared by accounting.

Q. Okay. And --

A. Well, the e-mail seems to indicate Martin -- somebody who worked for Martin Kelly had prepared it.

Q. And within the balance sheet, sir, the fifth column that's entitled Transaction Adjustments, do you see that?

A. Yes.

Q. Do you know what that column represents, what the entries in that column are meant to represent?

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A. Only from reading it.

Q. I don't want you just to guess from the face of the document.

A. No.

Q. Do you recall any discussion of transaction adjustments?

A. No.

Q. And in particular, if you could take a look at the last page of the document, I would ask you to take a look at the Transaction Adjustments column where it says 2 billion and 1.645 billion, are you with me?

A. Uh-huh.

Q. And you'll see that those relate to, if you read across to the left, items Bonus Payable and Cure Payments?

A. Uh-huh.

Q. And if you read across with me on the Cure Payments line, you'll see, as of 8/31/08, the number 701 is there, you with me?

A. Uh-huh.

Q. And then as of 9/17/08, 605?

A. Uh-huh.

Q. And then there's a transaction

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adjustment of 1,645,000,000?

A. Uh-huh.

Q. Resulting in a balance sheet transfer total of 2.25 billion, do you see that?

A. Uh-huh. Uh-huh.

Q. 2.25 is the amount that you recall Mr. Tonucci telling you was the assumed liability for cure that was Barclays' consideration in the deal?

A. Yes.

Q. Do you have any knowledge or have you been involved in any discussion where a transaction adjustment of 1.645 billion was made against Lehman's books? Do you know if that number was written up?

A. If it was written up, meaning?

Q. Do you know if the amount for cure payments shown on Lehman's books was written up by 1.645 billion?

A. Oh, I have no idea.

Q. Did you ever have a discussion with Mr. Tonucci or Mr. Kelly or Mr. Lowitt about that topic?

A. No.

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Q. And I'll ask you the same question, sir, with respect to the line for bonus payable. Do you see a transaction adjustment of 2 billion, and the 2 billion is contained in the Balance Sheet Transferred column?

A. Yes.

Q. Any conversations with Lowitt, Kelly or Tonucci about that topic?

A. No, no conversations.

Q. Any conversations with anyone else about that topic?

A. No.

Q. Was that topic addressed at the Friday meeting we've been talking about, to your recollection?

A. Only to the extent that there was a liability that was 2 billion and 2 and a quarter billion that's reflected in this balance sheet that had been agreed to prior.

Q. Do you know if those liabilities of 2 billion and 2 and a quarter billion were based on Lehman's accruals on its books, or were they agreed numbers?

A. I don't know.

**HIGHLY CONFIDENTIAL - A. KIRK**  
**7:18 P.M. on that Friday, did you have a discussion with anyone else about Barclays taking the collateral that was in the repo at any point?**

A. No.

**Q. Did you talk to anybody about that over the weekend?**

A. No.

**Q. Was there any conversation about that when you and Mr. McDade were at Weil in connection with preparing for the closing?**

A. Not that I recall.

**Q. Do you know if the issue of Barclays taking the collateral in the repo was addressed at the closing in any way?**

A. I assume not, because if the transaction was that they were -- well, I don't remember is the better answer. I don't remember that being discussed.

**Q. And as you sit here today, you have no recollection of you yourself engaging in a conversation with anyone about Barclays taking the collateral that was in the repo?**

A. Except for a vague recollection that

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Jim would have called me about it.

**Q. And just so I'm clear on that, because you're gesturing at the document saying "Jim would have," do you have a recollection --**

A. Yeah.

**Q. -- or are you just inferring that from the document?**

A. It's vague. I don't recall the specific conversation.

**Q. Okay.**

A. But if it had been an issue, I'm sure I would remember it.

**Q. Okay.**

A. Since it wasn't.

**Q. And from the discussions on Friday, it was your understanding that if Barclays got -- if this value collection effort gave Barclays enough value to support the financing in the repo, that Lehman would get the excess back, right?**

MR. HUME: Objection.

Mischaracterizes the testimony.

A. I don't --

MR. KELLEY: Do you want the question

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read back?

THE WITNESS: Yeah, why don't you read the question back, please. I'm not quite sure exactly...

(Record read.)

MR. HUME: Same objection.

A. No, that discussion never took place. There was too much uncertainty about the values.

**Q. Was there, in connection with this value of additional profit we talked about on Friday, was there any discussion about what it would take to get Barclays up to the value of the financing in the repo?**

A. Not that I was present at. I don't know if there were any away from me.

**Q. This sort of goes to a few other questions I have asked you about, whether there was a goal or a cap on how much had to be collected on Friday.**

**Without regard to what the number may or may not have been, was the goal to find enough assets to replace the loss in value within the repo?**

MR. HUME: Objection. Vague and

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ambiguous and lack of foundation.

A. In the end, I was the witness to an agreement that was agreed to between Bart and Ian and the Barclays team, but I wasn't part of any discussions as to the basis for that agreement.

**Q. And the agreement that you were a witness to is the one you described to me before where they said, do we have a deal?**

A. Yes.

**Q. And the agreement was we have a deal.**

(Exhibit 321, a document bearing Bates Nos. AK-LB-BANKR00002 through 27, marked for identification, as of this date.)

**Q. Mr. Kirk, I have put before you a document bearing Bates number AK-LB-BANKR000002 through 27. Do you recognize the document?**

A. Yes.

**Q. What is it?**

A. It's a notebook.

**Q. Is it your notebook?**

A. Yes, my notebook.

**Q. Is it in your handwriting?**

A. Yes.



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A. Yes.

**Q. Anything to add? Any knowledge as to why you're listing those eight names there?**

A. I don't recall specifically. Some of these people I'm responsible for, some of them I'm not, so I don't recall exactly what this list was -- why it's there. This would have been during the week, early in the week of the 15th.

**Q. And if you would turn to starting at page 24, it's the following four pages are -- following three pages are a typewritten balance sheet of some kind.**

**Are we in the same place?**

A. Yes.

**Q. And it's entitled Funding 2008 Q3 Balance Sheet?**

A. This was a schedule which was faxed to Bart Saturday morning at the Fed that he and I used to prepare for a meeting with John Mack, Vickram Pandit, John Thayne and their associates to discuss the possible iterations of Lehman Brothers going forward. This was those -- that was the first -- well, that's the first pages of

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**Q. Do you know, these numbers on the right-hand side, 1B and 1.7B, what do they represent?**

A. I don't recall what they represent.

(Exhibit 323, a document bearing Bates Nos. AK-LB-BANKR000030, marked for identification, as of this date.)

**Q. You have before you, Mr. Kirk, what we have marked as Exhibit 323, bearing Bates number AK-LB-BANKR000030. Are these notes in your handwriting?**

A. Yes.

**Q. Can you, as you look at them, do you remember the circumstances under which you took the notes?**

A. I think these were notes on Sunday during the closing.

**Q. And why is it you think they're notes on Sunday during the closing?**

A. Because I see a reference to Alastair, which would be Alastair Blackwell, who I didn't deal with prior to Sunday, and Tom Hamilton, who was head of mortgage trading at Barclays, who was trying to deal with this issue of the

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funding.

This second page is a -- is an analysis that B of A did marking down our assets earlier in the week, which we also discussed at that meeting. B of A's valuation of Lehman Brothers' assets.

**Q. You can put that aside. I'm done with that document.**

A. Okay.

(Exhibit 322, a document bearing Bates Nos. AK-LB-BANKR000028, marked for identification, as of this date.)

**Q. Before you, Mr. Kirk, is Exhibit 322, a one-page set of notes bearing Bates number AK-LB-BANKR000028. Is that your handwriting?**

A. Yes.

**Q. Do you have any recollection of making these notes?**

A. Yeah, this was somebody trying to explain to me in broad terms what 15c3-3 was.

**Q. Okay. I take it you're looking at the reference to customer accounts segregated in margin in the box in the upper left-hand corner.**

A. I'm looking at the whole page, yes.

**HIGHLY CONFIDENTIAL - A. KIRK**

settlements.

The dispute that arose on Sunday was who was going to guarantee the settlements of the trades that were supposed to settlement on Lehman Brothers' account starting Monday morning.

**Q. And that dispute, broadly speaking, involved DTC needing some comfort as to who was going to guarantee those settlements?**

A. Yes.

**Q. Now, on the notes themselves there is, amidst the names and above the name Tom Hamilton and Harry Harnson -- I'm just giving you that for placement on the document.**

A. Uh-huh.

**Q. -- is what appears to be an Assets and Liabilities column; is that right?**

A. Yes.

**Q. Okay. Can you explain to me what that represents?**

A. To the extent that I understand it, it represents some assets of 45 and a half billion, goodwill would be the next line of 250 million, and then it had a loan from BarCap that says 45

**HIGHLY CONFIDENTIAL - A. KIRK**

MR. HUME: Objection.

MR. KELLEY: Objection. Speculation.

Misstates prior answers.

MR. HUME: Vague and ambiguous as to valuation.

A. I didn't have that understanding.

**Q. Did you have --**

A. Nowhere did anybody say they should be equal.

**Q. Okay. Did you have an understanding that Barclays was going to get more than it had funded?**

A. In terms of assets?

**Q. Yes.**

A. Yeah, they were going to get assets that were unencumbered.

**Q. And when you added the unencumbered to the amount in the repo, was it your understanding that Barclays was going to take more out than it had funded into the repo?**

A. Well, they were also assuming other liabilities away from the repo.

**Q. I understand that.**

**Did you understand they were going to**

**HIGHLY CONFIDENTIAL - A. KIRK**

**take out more than they had funded into the repo?**

MR. KELLEY: Objection. That's based on speculation. Calls for speculation, I should say.

THE WITNESS: So I --

**Q. You can answer that question.**

MR. KELLEY: It just asks him to identify the source of his knowledge.

MR. GAFFEY: No, I'm going to ask him to answer the question I asked.

Will you read it back?

(Record read.)

A. I don't understand the nature of, when you say "take out more," what does that mean?

**Q. Barclays funds the repo to the tune of \$45.5 billion, you understand that, right?**

A. Right.

**Q. In the asset transfer agreement that's at issue for the bankruptcy court, Barclays is going to take a certain amount of assets out of Lehman, correct?**

A. Yes.

**Q. Was it your understanding that that**

**HIGHLY CONFIDENTIAL - A. KIRK**

**latter bucket of assets was to equal or to exceed the amount that Barclays had paid into the repo for funding?**

MR. HUME: Again, objection. Vague and ambiguous as to the valuations posed in your question.

A. My understanding was the totality of the assets should attempt to get somewhere close to covering all the liabilities.

**Q. The liabilities, you mean the liabilities in the repo plus the assumed liabilities?**

A. Yes.

**Q. Is that what you mean?**

MR. HUME: Objection to the phrase "assumed liabilities."

A. Yes.

**Q. And the assumed liabilities you're referring to are the assumed liabilities for payable and comp in the amount of 4.25 billion, correct?**

A. Correct, and then ultimately the assumed liabilities in guaranteeing the trading obligations which they were agreed to do come

**HIGHLY CONFIDENTIAL - A. KIRK**

Sunday.

**Q. Okay. And do you know what the resolution was of the issue of guaranteeing -- the dollar resolution was of the guarantee of the trading liabilities?**

A. I don't recall specifically, but they agreed to I think fund into DTC some amount of cash to make good on the liabilities. I don't remember what the number was.

**Q. Do you recall that the number was about \$250 million?**

A. Sounds reasonable.

**Q. Okay. So Barclays is to take out of the deal an amount roughly in balance to the amount in the repo, the assumed liability for comp, the assumed liability for payables, and the guarantee to the DTC; is that your understanding?**

MR. HUME: Object to the form of the question.

A. And the goodwill.

**Q. And the goodwill. And the goodwill is about 250 million, correct?**

A. Right, so that -- well, they were

1 HIGHLY CONFIDENTIAL - A. KIRK  
2 buying the business of Lehman Brothers and they  
3 were buying a whole bunch of assets which had,  
4 in my opinion, quite uncertain value so that  
5 they could lose many billions of dollars or make  
6 many billions of dollars on those assets given  
7 the volatility of the markets, and in addition  
8 to that, they would obviously get the ongoing  
9 operations of Lehman Brothers.

10 Q. Was it your understanding that --

11 A. So that it was --

12 Q. Sorry.

13 A. What I would say is that, in my  
14 opinion, there was, at least from my seat, no  
15 way to know what the actual value of those  
16 assets would end up being for Barclays, you  
17 know, over -- because I had no idea what  
18 strategies they were going to pursue about those  
19 assets, whether they were going to hedge them,  
20 you know, all the variety of things that they  
21 might end up choosing to do to execute a large,  
22 huge block of -- the size of a transfer of this  
23 size of assets is, you know, enormous and at the  
24 time maybe even unprecedented.

25 Q. Was it your understanding that the

1 HIGHLY CONFIDENTIAL - A. KIRK  
2 transaction was supposed to give Barclays a gain  
3 on day one?

4 A. No.

5 Q. I hear what you're saying about longer  
6 term they may operate the business and make  
7 money out of it. The question about day one, I  
8 want to be sure we're --

9 A. Yeah.

10 Q. -- hearing each other here. Was it  
11 your understanding that there was any immediate  
12 gain embedded for Barclays in the deal that was  
13 made on Friday?

14 MR. HUME: Objection. Lacks  
15 foundation.

16 A. No, there was no understanding on my  
17 part that there was a gain.

18 (Recess; Time Noted: 2:10 P.M.)

19 (Time Noted: 3:15 P.M.)

20 (Exhibit 324, a document bearing Bates

21 Nos. AK-LB-BANKR0000987 through 119, marked  
22 for identification, as of this date.)

23 BY MR. GAFFEY:

24 Q. Mr. Kirk, you have before you what we  
25 have marked as Exhibit 324, a document bearing

1 HIGHLY CONFIDENTIAL - A. KIRK  
2 Bates number AK-LB-BANKR000097 through 119. Do  
3 you recognize the document?

4 A. Yes.

5 Q. What is the document?

6 A. This is a document that describes the  
7 deal that was cut early in the week between  
8 Lehman and Barclays.

9 Q. Is that your handwriting on the  
10 document?

11 A. No.

12 Q. Do you know whose handwriting it is on  
13 the document?

14 A. No.

15 Q. I would note that the document was  
16 produced to us by you. Do you know how you came  
17 into possession of this document with somebody  
18 else's handwriting on it? Any memory?

19 A. No, I don't know what this is.

20 Q. Do you have any knowledge of what the  
21 annotations mean on the asset side where  
22 somebody has written "ACT" and "HC"?

23 A. No.

24 Q. Would you understand the phrase "HC"  
25 to mean haircut?

1 HIGHLY CONFIDENTIAL - A. KIRK

2 A. That could be.

3 Q. Would you understand the phrase "ACT"  
4 to mean actual?

5 A. That's not usually a vernacular, but  
6 maybe.

7 Q. I asked you --

8 A. It could be "account."

9 Q. Could be. I don't know what your --

10 A. Yeah. Yeah.

11 Q. I asked you earlier this morning if  
12 you had any knowledge of a discount or a haircut  
13 being given to Barclays on the book value of the  
14 assets being traded for in the early part of the  
15 week. Does this refresh your recollection as to  
16 whether there was an agreement on the deal as it  
17 originally was made on Monday and Tuesday to  
18 give Barclays a discount from book value?

19 A. No.

20 Q. Could you put before you Exhibit 19?  
21 It's within the pile.

22 A. What does it look like?

23 Q. It's the other copy of that financial  
24 statement, the one-pager.

25 A. Yeah.

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1 HIGHLY CONFIDENTIAL - A. KIRK  
2 be assuming all kinds of risks from failed  
3 trades on Friday and in addition to the trades  
4 going forward on Monday, and that they wanted  
5 some -- they needed a margin safety to be able  
6 to do that. So they were concerned that they  
7 were exposed.

8 Q. And did you hear anything about the  
9 extent of that exposure?

10 A. No.

11 Q. Do you know if the deposit or the  
12 guarantee was meant to cover the entire  
13 potential exposure?

14 A. I don't know the answer to that.  
15 Those discussions happened directly, that is, my  
16 understanding those discussions happened  
17 directly between DTC and Barclays.

18 Q. Do you know if there was a written  
19 agreement?

20 A. I don't know that.

21 Q. You never saw a written agreement  
22 resolving this dispute with the DTC?

23 A. No. No.

24 Q. Did you hear anything about what would  
25 happen to the guarantee if it turned out not to

1 HIGHLY CONFIDENTIAL - A. KIRK  
2 be used?

3 A. No.

4 Q. Changing the subject. You mentioned  
5 back on September 14 that Mr. McDade told you  
6 that the first transaction that was being  
7 discussed with Barclays wasn't going to go  
8 forward. Do you remember that?

9 A. Yes.

10 Q. And I think you said he told you that  
11 the FSA had turned down the application to close  
12 that transaction?

13 A. Yes.

14 Q. Did he tell you why?

15 A. Yes, that Barclays needed a waiver to  
16 guarantee the trading obligations -- I'm sorry,  
17 Barclays -- for Lehman to -- for them to close  
18 the transaction, they would have to get a  
19 shareholder vote, which would take some period  
20 of time, I forget if it was 30 or 45 days, but  
21 some reasonable period of time, and that it was  
22 the view of all the participants, including  
23 Treasury and the Fed and everybody, that Lehman  
24 would not make it for 30 days without somebody  
25 else guaranteeing the trading obligations for

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1 HIGHLY CONFIDENTIAL - A. KIRK  
2 that period of time.

3 The only person who would do that was  
4 Barclays. Barclays apparently needed a waiver  
5 of shareholder approval to make that guarantee,  
6 which the FSA deemed they would not give.

7 Q. Okay. Let me now switch topics again  
8 and take you back to the Friday meeting that you  
9 testified that I think you said started around 3  
10 o'clock on Friday afternoon?

11 A. Uh-huh.

12 Q. This is the meeting that you had with,  
13 among others, Mr. Klein, Mr. Diamond and  
14 Mr. Keegan from Barclays?

15 A. Uh-huh.

16 Q. You have to give me an out-loud  
17 answer --

18 A. Yes.

19 Q. -- for the court reporter. Thanks.

20 Was Mr. McDade physically present in  
21 that meeting or is he on the phone?

22 A. He's on the phone.

23 Q. And were there any discussions about  
24 that during that meeting about having to go back  
25 and explain the deal to the Barclays board?

1 HIGHLY CONFIDENTIAL - A. KIRK

2 A. No, not in that meeting.

3 Q. Did you hear that at another meeting?

4 A. No, I didn't hear it in any meeting.

5 Q. When you say no, you don't think it  
6 happened or you don't remember?

7 A. No, I didn't hear it. Didn't  
8 happen -- that was not discussed in front of me.

9 This was what day again? This was the  
10 19th?

11 Q. On Friday, the 19th.

12 A. Friday, yes, no.

13 Q. You had a meeting --

14 A. Yeah.

15 Q. -- late in the afternoon where -- this  
16 is late in the afternoon where I think you said  
17 this is when Barclays came back and said they  
18 thought the value of the securities didn't match  
19 the value of the loan and so they were looking  
20 for additional unencumbered assets?

21 A. Uh-huh.

22 Q. Is that right?

23 A. Yes.

24 Q. And Mr. Gaffey asked you a couple of  
25 times about whether they gave a target or a



**HIGHLY CONFIDENTIAL - A. KIRK**

**number for how much more they would need?**

A. Yes.

**Q. Right?**

**As best you can recall, they didn't give you such a number, correct; is that right?**

A. That's correct.

**Q. And nobody -- Mr. Klein didn't say anything about having to have a certain number to go back to the Barclays board?**

A. No.

**Q. I'm going to mark as my only exhibit as 326 an e-mail from you to Mr. McDade.**

**(Exhibit 326, an e-mail chain, marked for identification, as of this date.)**

A. Right.

**Q. Do you recall sending this e-mail to Mr. McDade?**

A. I do recall that.

**Q. So the bottom e-mail on the page is from you to Mr. McDade. It's sent on that Friday at 3:39.**

A. Uh-huh.

**Q. Do you see that?**

A. Yes.

**HIGHLY CONFIDENTIAL - A. KIRK**

**Q. You write to Mr. McDade, "Rich Ricci just told me he won't blow up this trade by being a pig."**

**Do you recall the context for that?**

A. Well, the Barclays team had left. Bart was on the road and he was having discussions with Ian about whatever additional assets there were. You know, I implored to these guys that they shouldn't blow this deal up, 10,000 jobs were at stake, you know, there was a tremendous amount of pressure on all of us, and Rich said to me something to this effect: I won't blow the deal up by being too piggish.

I wanted to make sure Bart knew that because they were wrapping up with he and Ian whatever issues there were, so that's why I sent the e-mail.

**Q. Was there a concern on the Lehman said that the Barclays people were being too piggish?**

A. I was concerned that we were going to go into bankruptcy court, which there's always uncertainty, and try to describe a deal that didn't look like the deal that they had heard

**HIGHLY CONFIDENTIAL - A. KIRK**

**about two days before.**

**So my primary concern at that point was that there be as much flexibility, so to speak, at least give the -- enough operating room that we wouldn't go into court, have the transaction denied, and have to put the padlocks on the building Saturday morning.**

**So -- and I've been around many, many bankruptcy cases over two decades. Wildly uncertain things happen in these courts in circumstances.**

**Q. Sorry. Is that what you meant by "blow up the trade"?**

A. Yes.

**Q. That the bankruptcy court wouldn't approve the deal?**

A. That's correct.

**Q. And you were, just so I understand your testimony, you were concerned that that might happen if Barclays was too piggish?**

A. Yeah, I think there were a myriad of risks that could have done, you know, I mean, the -- the stress of that not happening that evening and you only had one shot at it, you

**HIGHLY CONFIDENTIAL - A. KIRK**

**know, it was -- certainly everybody was very concerned that this was sort of a do-or-die situation, literally.**

**Q. Was the comment about being a pig related to the effort to find unencumbered assets?**

A. Yes.

**Q. And you didn't -- so you don't have, since that's in Mr. Lowitt's bailiwick, you don't have a specific number or value that would --**

A. No, this comment had been made to me. I just wanted to pass it along.

**Q. And then Mr. McDade asks you back, "Are the shorts all gone?" What was that a reference to? Did you have an understanding as to what he meant?**

A. I don't recall specifically why he asked that, but that was a problem we were dealing with all week at Lehman, that we were naturally getting longer every day because our hedges were either derivatives that had been wiped out by the terms of their contracts or short positions that were being bought in on the

1 HIGHLY CONFIDENTIAL - A. KIRK  
2 other side.

3 So, you know, asset prices were  
4 imploding and we were naturally getting longer  
5 every day. So his question was how long is the  
6 firm, so to speak, at this moment in time. I  
7 believe -- I don't -- so that's what I -- I  
8 guess I tracked that down.

9 **Q. And that's what your answer to**  
10 **Mr. McDade says?**

11 A. Yeah. Yeah.

12 MR. ROTHMAN: That's all the questions  
13 I have. Thank you.

14 THE WITNESS: You're welcome.

15 EXAMINATION BY

16 MR. TECCE:

17 **Q. Mr. Kirk, my name is James Tecce. I'm**  
18 **an attorney at Quinn Emanuel. We are special**  
19 **counsel to the Creditors Committee. I just**  
20 **wanted to ask you a couple of follow-up**  
21 **questions.**

22 **Going back to Friday, September 19th,**  
23 **I believe it is, I think that you had said that**  
24 **it was your belief on that day that JPMorgan**  
25 **Chase would be "hostile," I believe was the word**

1 **HIGHLY CONFIDENTIAL - A. KIRK**  
2 **that you used, with respect to the transaction.**  
3 **What was the basis for that belief?**

4 A. The fact that they had shut our DTC  
5 account down was one issue. The other issue was  
6 that Barclays had described to me they were  
7 having a dispute with JPMorgan about the  
8 transfer of collateral. In addition to that,  
9 JPMorgan had been, my -- my understanding, it  
10 had been described to me by Ian that JPMorgan  
11 over time prior to the bankruptcy had been  
12 squeezing a lot of additional collateral out of  
13 Lehman Brothers along the way.

14 **Q. Do you have an understanding as to**  
15 **when JPMorgan froze the DTC account?**

16 A. You know, it was either Thursday or  
17 Friday. I don't remember. I think it was --  
18 I'm pretty sure it was Friday, but it may have  
19 been Thursday.

20 **Q. And when were you told about the**  
21 **dispute between Chase and Barclays that you**  
22 **described?**

23 A. Friday morning.

24 **Q. Going forward --**

25 A. And that's when I learned about the

1 HIGHLY CONFIDENTIAL - A. KIRK  
2 DTC account. So I don't remember whether they  
3 had closed -- I learned about it all on Friday.  
4 I just don't remember if it was for that day or  
5 it was for the previous day.

6 **Q. Do you know what the basis -- do you**  
7 **have an understanding of the basis of**  
8 **Mr. Lowitt's statements that Chase had been**  
9 **taking collateral?**

10 A. Well, he was dealing with them  
11 directly, so they were -- my understanding was  
12 that they were threatening to not clear our  
13 transactions without additional collateral prior  
14 to the bankruptcy.

15 **Q. Did he provide any examples of that to**  
16 **you?**

17 A. The one example that he provided was  
18 that they requested Thursday night, the 11th --  
19 is that right? Yeah, the 11th, that Lehman  
20 deliver another \$5 billion to them prior to the  
21 opening on Friday.

22 **Q. Going forward to the 21st, I believe**  
23 **Sunday, the day of the closing, September 21,**  
24 **you had just spoken briefly about the dispute**  
25 **regarding the guarantee of trades with the DTC.**

1 **HIGHLY CONFIDENTIAL - A. KIRK**  
2 **Were you aware of any other disputes**  
3 **besides that issue between Chase and Barclays at**  
4 **that time?**

5 A. They were still arguing about the  
6 transfer of collateral, your clients were there  
7 for some of those arguments, in a, what I would  
8 refer to as a giant conference room with 50  
9 people in it and a lot of yelling.

10 **Q. Right. And do you remember the**  
11 **substance of those disputes regarding the**  
12 **collateral?**

13 A. JPMorgan felt as if Barclays should  
14 pay them and take additional collateral to  
15 complete the repo transfer from the Fed, and in  
16 addition to that, they actually asked for  
17 Barclays to buy additional collateral even  
18 beyond that that they had gotten from Lehman  
19 Brothers earlier.

20 **Q. And do you have an understanding as to**  
21 **what the resolution of that dispute was?**

22 A. No, they wouldn't tell us.

23 **Q. Do you have an understanding of anyone**  
24 **at Lehman who does know the resolution of that**  
25 **dispute?**

**HIGHLY CONFIDENTIAL - A. KIRK**  
been part of the Fed repo or would they have been part of the, quote/unquote, unencumbered?

A. The issues that I'm discussing with him here are settlements. So these are going forward -- they're not actually positions. They're going-forward settlements between Lehman and other counterparties that Lehman's standing in the middle buying and selling all kind of securities. So that the positions were reflected.

This would have reflected what risk there would be in settlements not settling in a normal way. So that -- but to answer your question, I don't -- I don't remember what the percentage of treasuries were in this. I wasn't dealing with him on any -- on that issue.

MR. TECCE: Those are the only questions I have. Thank you for your time.

MR. HUME: I have just a few questions.

EXAMINATION BY

BY MR. HUME:

**Q. Mr. Kirk, my name is Hamish Hume. We met before. I represent Barclays.**

**HIGHLY CONFIDENTIAL - A. KIRK**

Mr. Kirk, during the week of September 15 to September 22, 2008 that you've been questioned about, did you believe there was any other viable purchaser of Lehman Brothers other than Barclays?

A. No.

**Q. Did you believe there was any other alternative for Lehman Brothers other than the Barclays acquisition?**

A. Liquidation.

**Q. Did you believe the Barclays acquisition was the best outcome for the Lehman estate for all stakeholders?**

A. Yes.

**Q. During the questioning earlier in the deposition, you were asked -- you testified about discussions with Mike Keegan about valuation of assets, do you recall that, generally?**

A. Yes.

**Q. And I think at one point you were explaining that Mr. Keegan complained about certain asset values and that you at some point huddled with Ian Lowitt and Bart McDade to**

**HIGHLY CONFIDENTIAL - A. KIRK**  
discuss whether there was any good basis for disagreeing with Mr. Keegan's concerns. Do you recall describing that?

A. Yes.

**Q. I believe you testified that the three of you concluded there wasn't really a strong basis for disagreeing with Mr. Keegan. Do you recall that?**

A. Yes.

**Q. During those discussions, were you attempting to negotiate the best deal you could for Lehman Brothers?**

A. Yes.

**Q. Do you believe you participated in arm's length negotiations or that you witnessed arm's length negotiations?**

A. I'll be clear about that. I wasn't actually negotiating and I wasn't -- I had no authority to negotiate. I believe we were participating in arm's length negotiations, Lehman was, with Barclays.

**Q. You testified earlier in the deposition that you did not have an understanding regarding whether there would be a**

**HIGHLY CONFIDENTIAL - A. KIRK**  
gain at Barclays on day one; do you recall that line of questioning?

A. Yes.

**Q. Did you have any knowledge about how Barclays would account for this transaction on its balance sheet?**

A. No.

**Q. Did you give any thought or analysis to how Barclays would account for the transaction on its balance sheet during the negotiations?**

A. No.

**Q. Did you have any knowledge of whether Barclays would be required to record an intangible asset in excess of a billion dollars on its balance sheet?**

A. No.

**Q. Did I understand your testimony earlier that you believed many of the assets being transferred to Barclays were of uncertain value?**

A. Yes.

**Q. And were many of those assets going to take some time to value?**

**HIGHLY CONFIDENTIAL - A. KIRK**

A. Yes.

**Q. Did you understand the liabilities for cure payments and compensation to be estimated liabilities?**

A. Yes.

**Q. Did you understand that Barclays was stepping into the shoes of Lehman with respect to its exchange-traded derivative accounts?**

A. I was not aware of any agreements around the derivatives.

**Q. You weren't involved one way or the other with derivatives?**

A. I wasn't involved one way or the other.

**Q. Did you generally understand that both the assets and the liabilities Barclays was taking over were uncertain and difficult to value as of the time of the transaction?**

A. Yes.

**Q. Therefore, as of the time of the transaction, was it in your mind possible that after Barclays had taken the time to value the assets and the liabilities in accordance with its own methodology and accounted for the**

**HIGHLY CONFIDENTIAL - A. KIRK**

**transaction under its own accounting methodologies, that it would be possible that it record either a gain or a loss on the transaction --**

MR. GAFFEY: Objection.

**Q. -- as of day one?**

MR. GAFFEY: Object to the form.

**Q. Do you understand the question?**

MR. GAFFEY: You can ignore me.

THE WITNESS: Okay.

MR. GAFFEY: He can't, but you can.

THE WITNESS: Okay. I never know with these objections if I'm supposed to ignore them or not.

I think it was completely a matter of -- I had no idea what their accounting issues were on any of those fronts, so I was not aware of that, and whether they would end up recording a gain or loss over time would depend upon market conditions, hedging strategies, you know, disposition strategies, et cetera, that I had no insight into how they were going to execute them.

**Q. I understand that. I think you said**

**HIGHLY CONFIDENTIAL - A. KIRK**

**that earlier. I'm saying, wholly apart from what would happen over time, after Barclays took the time to actually value the assets and liabilities as they were valued on day one, given the uncertainties in both the assets and values that Barclays took on and the limitations on what you knew about derivatives and other assets, was it in your mind at least possible that Barclays would record either a gain or a loss on day one, as of day one of the transaction?**

MR. GAFFEY: Objection to form.

MR. ROTHMAN: Objection to form.

A. Yes, it was possible.

**Q. Mr. Kirk, you testified a little bit about the transfer of collateral when Barclays replaced the Federal Reserve's lending position on the repo transaction, do you recall that, generally?**

A. Yes.

**Q. Were you aware of that when Barclays advanced its \$45 billion in cash to replace the Federal Reserve, Barclays did not receive the same collateral that had been pledged by Lehman**

**HIGHLY CONFIDENTIAL - A. KIRK**

**to the Federal Reserve in its repo?**

A. I was not aware of that.

**Q. Were you aware of the operational difficulties that arose when the Fed collateral was released into the Lehman clearing account so that some of that collateral disappeared or was tucked into other transactions and, therefore, could not be transferred to Barclays?**

A. I was not aware of any specifics of those issues. I was aware there was a -- some dispute.

**Q. I'd like to refer you very quickly to Exhibit 321.**

A. Okay.

**Q. The third-to-last page with the Bates number, number in the bottom corner, number 25.**

A. Okay.

**Q. Which I believe you testified reflected write-downs that were being discussed or considered by Bank of America in the potential Bank of America transaction; is that correct?**

A. That is correct.

**Q. Was this done during that weekend**



**HIGHLY CONFIDENTIAL - A. KIRK**

**before the bankruptcy when you were at the Fed?**

A. This was done I believe the Friday,  
December -- September 12th.

**Q. And I don't know if you testified or  
not, but whose handwriting is this on this page?**

A. I don't know whose handwriting this  
is. It's not mine.

**Q. Was the general idea that Bank of  
America wanted haircuts or discounts from the  
marked to market book values that Lehman had for  
these assets?**

A. Yes.

**Q. And was that information shared with  
the Federal Reserve during discussions?**

A. Yes.

**Q. And did the Federal Reserve express  
any surprise or disagreement with that concept?**

A. I wasn't there when they shared it,  
this information.

**Q. How do you know it was shared with the  
Federal Reserve?**

A. Because we got this delivered to us at  
the Federal Reserve. We shared it with -- I  
think Bart gave a copy to Shafron and we shared

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it with John Mack, Vickram Pandit and John  
Thayne and their teams.

**Q. You testified earlier about the  
unencumbered collateral in the clearance boxes  
that Ian Lowitt identified as assets to be  
transferred, do you recall that?**

A. Yes.

**Q. And you testified that there was an  
agreement that those assets would be transferred  
made on the Friday, September 19?**

A. Yes.

**Q. Is that right?**

A. Correct.

**Q. You also testified that you were aware  
of an issue over the weekend relating to the  
DTC's desire for some support for settlement  
obligations on the Monday, correct?**

A. Correct.

**Q. And your general understanding was  
Barclays agreed to deposit \$250 million to  
address those settlement obligations?**

A. Yes.

**Q. Did anyone at any time ever tell you  
or lead you to believe -- let me withdraw that**

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**and say it differently.**

**Did you at any time form an  
understanding at any time that weekend or that  
Monday, the 22nd, did you ever form an  
understanding that the unencumbered collateral  
in the clearance boxes that Ian Lowitt had  
identified to be transferred in the transaction  
were not going to be transferred in the  
transaction because of the way in which Barclays  
was dealing with the DTC settlement issue?**

MR. ROTHMAN: Objection to the form.

MR. GAFFEY: Join.

MR. TECCE: Join.

A. No.

**Q. That was never your understanding?**

A. No.

MR. HUME: No further questions.

EXAMINATION BY

MR. GAFFEY:

**Q. Just one or two. Your view that there  
was no other viable purchaser, would that view  
have changed if there were a \$5 billion  
immediate gain embedded in the transaction?  
Would you have had the view there might be**

**HIGHLY CONFIDENTIAL - A. KIRK**  
**viable purchasers then?**

MR. HUME: Object to the form. Calls  
for speculation.

A. I think the -- there were -- we were  
open to a transaction with anybody, so if  
somebody was willing to take that kind of risk,  
I assume they would have showed up.

**Q. Do you think they would have shown up  
if they were not told there was a \$5 billion  
haircut embedded in the transaction?**

MR. KELLEY: Objection. Calls for  
speculation.

A. There was no certainty what that  
number was.

**Q. If, in addition to whatever else was  
said about the deal publicly, it was also said  
that there was a \$5 billion haircut embedded in  
the transaction, do you think there would have  
been other viable purchasers, do you know?**

MR. KELLEY: Objection. Calls for  
speculation.

A. I don't know.

**Q. Are you able to say one way or the  
other?**

**HIGHLY CONFIDENTIAL - A. KIRK**

A. Not really.

**Q. Okay. Do you know the basis of the estimated liabilities? You told Mr. Hume that you knew that the liabilities for comp and cure were estimated in some way. Do you know the basis for the estimation?**

A. I assume that the basis was -- I don't know the estimation. I knew it came from our Finance Department.

**Q. And your understanding at the time on the Friday when you were looking at this was that those were estimates based upon Lehman's books, correct?**

A. Upon the work that Lehman had done. Certain, you know, liabilities only come up in the nature a transaction like this, right? So you cancel contracts you have liabilities. So they would be contingent and necessarily not necessarily on your books prior to doing an acquisition like that.

So the -- it's -- it's not -- it's not completely -- it wouldn't be completely just what was actually recorded on the books. There would also be other liabilities that could be

**HIGHLY CONFIDENTIAL - A. KIRK**

triggered by the transaction itself.

**Q. And back to this issue of a viable purchaser, if it had been announced in addition to the other components of the deal that -- withdrawn.**

**You understood the assumed liabilities component of the deal to be a cost that Barclays would have in the transaction, correct?**

A. Correct.

**Q. If it had been publicly announced that the \$2 billion cost for compensation had been deliberately inflated by a billion dollars, that in your view would lower the actual cost for Barclays, correct?**

MR. KELLEY: Same objection.

A. If --

**Q. If it --**

A. If the answer is if it was inflated, it would lower the cost, the answer is yes, that's factual, I think.

**Q. If it had been announced in addition to other components of the deal that the assumed liability for compensation was deliberately inflated by a billion dollars, do you have a**

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**view as to whether that might have attracted other viable purchasers?**

A. The market was so uncertain and there was so much financial stress in the list of potential purchasers that I'm not sure there was anybody who could have executed it no matter what they thought the gain was because the market would have viewed it as too risky, so to speak, and too strategically risky in many ways and too risky from a financial standpoint to approve them for any board to approve it.

**Q. In your view --**

A. No matter what the gain was.

**Q. Sure. And in your view, was there at any point where additional value in the deal might have attracted other viable purchasers?**

MR. HUME: Objection. Asked and answered.

A. None with the time to actually execute it.

**Q. And what was your role in determining whether or not there were other actual viable purchasers?**

A. I didn't have a role in that.

**HIGHLY CONFIDENTIAL - A. KIRK**

**Q. Did you have any role at all in that?**

A. No, that was the role of the FIG, the FIG bankers, Financial Institutions Group.

MR. GAFFEY: Thanks. Nothing further.

THE WITNESS: Okay.

MR. ROTHMAN: One question.

EXAMINATION BY

MR. ROTHMAN:

**Q. Fair to say that you don't know how the dispute -- the terms of the resolution of the dispute with the DTC on that Sunday night?**

MR. HUME: Objection. Vague and ambiguous.

MR. KELLEY: Asked and answered, too.

A. I don't know. Did you say is it fair to say I don't know the terms?

**Q. You don't know, yes.**

A. I only know it was described that there was 250 million put into the DTC account. I don't know the full terms. As I said, there may have been other terms that I was not aware of.

**Q. You don't know, beyond that 250 million that we discussed, you don't know one**

**HIGHLY CONFIDENTIAL - A. KIRK**  
way or the other what was supposed to happen to  
the unencumbered assets that had been in that  
DTC box, correct?

A. No, I don't know that.

MR. ROTHMAN: Thank you.

MR. HUME: Let me have follow up on  
that.

EXAMINATION BY

MR. HUME:

**Q. When you say you don't know the  
unencumbered assets in the DTC box, to the  
extent that they were identified by Mr. Lowitt  
as transferable assets, was it your  
understanding they were going to be transferred  
as part of the deal?**

(Continued on the next page to include  
the jurat.)

**HIGHLY CONFIDENTIAL - A. KIRK**

MR. ROTHMAN: Objection to the form.

A. Yes.

MR. HUME: No further questions.

THE WITNESS: I may have misunderstood  
the earlier question.

MR. GAFFEY: I'm going to have mercy.  
I have no follow-up questions.

(Time Noted: 3:06 P.M.)

oOo

\_\_\_\_\_  
ALEX KIRK

Subscribed and sworn to  
before me this day  
of 2009.

**HIGHLY CONFIDENTIAL - A. KIRK**  
CERTIFICATE  
STATE OF NEW YORK )

: ss

COUNTY OF NEW YORK)

I, Kathy S. Klepfer, a Registered  
Merit Reporter and Notary Public within and  
for the State of New York, do hereby  
certify:

That ALEX KIRK, the witness whose  
deposition is herein before set forth, was  
duly sworn by me and that such deposition is  
a true record of the testimony given by such  
witness.

I further certify that I am not  
related to any of the parties to this action  
by blood or marriage and that I am in no way  
interested in the outcome of this matter.

I further certify that neither the  
deponent nor a party requested a review of  
the transcript pursuant to Federal Rule of  
Civil Procedure 30(e) before the deposition  
was completed.

In witness whereof, I have hereunto  
set my hand this 31st day of August, 2009.

-----  
KATHY S. KLEPFER, RPR, RMR, CRR, CLR

**HIGHLY CONFIDENTIAL - A. KIRK**

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HIGHLY CONFIDENTIAL - M. KLEIN  
UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

In Re:

Chapter 11

LEHMAN BROTHERS Case No. 08-13555(JMP)  
HOLDINGS, INC., et al., (Jointly Administered)

Debtors.

-----X

\* \* \*HIGHLY CONFIDENTIAL\* \* \*

DEPOSITION OF MICHAEL KLEIN

New York, New York

September 12, 2009

Reported by:

KATHY S. KLEPFER, RMR, RPR, CRR, CLR

JOB NO. 24546



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1 HIGHLY CONFIDENTIAL - M. KLEIN  
2 wait until I complete a question before you  
3 answer it, we'll get a cleaner transcript.

4 A. Okay.

5 Q. Okay?

6 A. Thank you.

7 MR. GAFFEY: As to confidentiality, we  
8 have a Confidentiality Stipulation and Order  
9 which has been so ordered by Judge Peck.  
10 Our agreement has been that all depositions,  
11 including depositions of non-parties, as it  
12 were, which includes Mr. Klein, are covered  
13 by that, and you will have the same rights  
14 that the party has under the confidentiality  
15 agreement. If you don't have a copy of it  
16 we'll get it.

17 MR. BERNICK: That's agreeable and we  
18 appreciate that.

19 MR. GAFFEY: I should add, too, we  
20 have had a convention over and above that  
21 confidentiality stip which has worked well  
22 for us up till now, which is that the entire  
23 deposition transcript is deemed to be --

24 Is it highly confidential?

25 MR. STERN: Highly confidential.

1 HIGHLY CONFIDENTIAL - M. KLEIN

2 MR. GAFFEY: -- for some period of  
3 time, seven or ten days or so, and we'll  
4 sort that out, to give you time to sort of  
5 undesignate.

6 MR. BERNICK: Great. Terrific.  
7 BY MR. GAFFEY:

8 Q. Mr. Klein, by whom are you employed,  
9 sir?

10 A. I'm not employed.

11 Q. Okay. Was there a time when you  
12 worked at Citibank?

13 A. Yes. To be correct, I have an ongoing  
14 consulting relationship with one company, so --  
15 but I'm not employed.

16 Q. Okay. And with what company do you  
17 have an ongoing consulting relationship?

18 A. With the Dow Chemical Company.

19 Q. And was there a time when you were  
20 employed at Citibank?

21 A. Yes.

22 Q. Could you just give me the time  
23 periods? How long were you there?

24 A. I was at Citi or the predecessors that  
25 amalgamated into Citi from 1985 until 2008.

Page 8

Page 9

1 HIGHLY CONFIDENTIAL - M. KLEIN

2 Q. And what was the last position that  
3 you held at Citi?

4 A. My final position was a position that  
5 had the title of Chairman of Institutional  
6 Clients Group, and in that regard, I had a  
7 series of responsibilities and relationships  
8 with clients, amongst them governments,  
9 corporations, et cetera.

10 Q. And when did you leave Citi? What  
11 month of '08?

12 A. I think my last official date was July  
13 21st. The third week in July.

14 Q. Did there come a time during 2008  
15 where you were asked to become involved in any  
16 way in negotiations between Lehman and Barclays?

17 A. Yes.

18 Q. When did that occur?

19 A. Approximately the Thursday before the  
20 weekend of the Lehman bankruptcy filing.

21 Q. We have in front of you a blank  
22 calendar which you might want to refer to  
23 through the day, because in this case we have  
24 sort of shorthanded it to the Tuesday or the  
25 Wednesday, and that will help you pick

1 HIGHLY CONFIDENTIAL - M. KLEIN  
2 particular dates.

3 Taking a look at that calendar, if you  
4 don't mind, you were referring to the Thursday?

5 A. Before the Lehman bankruptcy.

6 Q. Okay. So that would be Thursday, the  
7 11th?

8 A. I believe that's so.

9 Q. Would you describe for me, please, how  
10 you came to be involved, who asked you to be  
11 involved, and what you were asked to do?

12 A. I was called by a gentleman named  
13 Hans-Jörg Rudloff at Barclays who asked me just  
14 in general where I was, what I was doing. It  
15 was a non-specific conversation. It was  
16 followed up by a call from Bob Diamond. Bob  
17 asked me if I could be available, given all that  
18 was going on with Lehman Brothers, to be of  
19 assistance to Barclays. And that was his  
20 request.

21 Q. Now, at the time I understand you had  
22 some sort of restrictive covenant or a  
23 non-compete or a garden leave with regard to  
24 your departure from Citi; is that correct?

25 A. That's right.

| Page 42                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Page 43                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1           HIGHLY CONFIDENTIAL - M. KLEIN</p> <p>2   between the discussions that Barclays had to</p> <p>3   have with all of their own regulators to get</p> <p>4   sign-off to do anything, walking into this</p> <p>5   situation, should it be something that should be</p> <p>6   done.</p> <p>7           And then, third, and I'm sure there</p> <p>8   were other things as well, but how do you</p> <p>9   protect yourself from all of the risks that</p> <p>10   could emerge. It's one thing to try to make a</p> <p>11   transaction and fail. It's another thing to</p> <p>12   make a transaction and fail. And obviously</p> <p>13   Barclays had a very big global franchise that</p> <p>14   they would be putting at risk. So that was the,</p> <p>15   if you will, morning.</p> <p>16           We then went over to Lehman's</p> <p>17   building, the Seventh Avenue building, sometime</p> <p>18   in that afternoon and began to understand what</p> <p>19   potentially could be achievable. I think the --</p> <p>20   because there was no understanding of what a,</p> <p>21   quote, transaction was, it was fairly clear</p> <p>22   that, when we walked over, we were hoping to be</p> <p>23   able to effectively see if there was a way to do</p> <p>24   business with the Lehman people and do business</p> <p>25   as Lehman.</p>                                                   | <p>1           HIGHLY CONFIDENTIAL - M. KLEIN</p> <p>2           That was the hope behind it, beyond</p> <p>3   which there was very limited knowledge. There</p> <p>4   was a substantial amount of noise in the</p> <p>5   marketplace because the markets had dropped</p> <p>6   dramatically and there was a view that assets --</p> <p>7   that Lehman was just hemorrhaging assets so that</p> <p>8   no one knew what would be left, if you will,</p> <p>9   when we got over there, and then we went over to</p> <p>10   the meetings at Lehman.</p> <p>11           Q.   And before you went over to the</p> <p>12   meetings at Lehman, what, if any, parameters did</p> <p>13   Barclays come up with to answer the question of</p> <p>14   how it would protect itself?</p> <p>15           MR. BERNICK: Again, I know that Mr.</p> <p>16   Gaffey will concur with this. He's really</p> <p>17   asking these questions of you for what you</p> <p>18   know. So you're not here representing</p> <p>19   Barclays. You're here just being Michael</p> <p>20   Klein. Subject to that, what he's asking</p> <p>21   you about is what you know of about that</p> <p>22   question.</p> <p>23           Q.   Just I'll restate the question just so</p> <p>24   we can be efficient today.</p> <p>25           MR. BERNICK: Okay.</p>                                                         |
| Page 44                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Page 45                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <p>1           HIGHLY CONFIDENTIAL - M. KLEIN</p> <p>2           Q.   At no point today do I want you to</p> <p>3   give me anything other than your personal</p> <p>4   knowledge, and I agree with Mr. Bernick: You're</p> <p>5   not here as a representative of Barclays. I'm</p> <p>6   not asking for the history, the global history</p> <p>7   of the transaction. I'm asking for what you</p> <p>8   know, what you saw, what you remember.</p> <p>9           MR. BERNICK: And the only reason I</p> <p>10   kicked off into that is because you asked</p> <p>11   him how did Barclays come up or what</p> <p>12   parameters did Barclays come up with, and it</p> <p>13   sounded like it was a bit broader.</p> <p>14           Q.   Let's assume, sir, so I don't have to</p> <p>15   say it ever time, that all my questions begin</p> <p>16   with "to your knowledge."</p> <p>17           So, to your knowledge, what parameters</p> <p>18   did Barclays come up to address the question of</p> <p>19   how it would protect itself?</p> <p>20           A.   Again, it's not very easy for me to</p> <p>21   reconstruct what at any moment in time even to</p> <p>22   my own knowledge existed. I do know that the</p> <p>23   concept of walking into the bankruptcy was one</p> <p>24   that there was a lot of trepidation and there</p> <p>25   was a sense that this was a -- if there was an</p> | <p>1           HIGHLY CONFIDENTIAL - M. KLEIN</p> <p>2   opportunity to have some of the right to do</p> <p>3   business in the areas that the -- that Lehman,</p> <p>4   old traditional Lehman, could offer, that would</p> <p>5   be great, but there was no appetite to take risk</p> <p>6   on things that could, if you will, come out of</p> <p>7   the woodwork or things that could bite. There</p> <p>8   just wasn't an ability to do that. That window,</p> <p>9   if you will, of being the whole owner of a, if</p> <p>10   you will, a business and a big balance sheet,</p> <p>11   the whole element, that was the weekend and had</p> <p>12   passed.</p> <p>13           Q.   Did Mr. Diamond express to you a view</p> <p>14   at that time that Barclays would not be willing</p> <p>15   to pay a premium or market price -- I beg your</p> <p>16   pardon. Did he express -- let me restate that</p> <p>17   question.</p> <p>18           Did Mr. Diamond express to you a view</p> <p>19   that Barclays would not be willing to pay a</p> <p>20   premium or book value as opposed to a distressed</p> <p>21   price for Lehman's assets?</p> <p>22           A.   I don't recall, but I don't think</p> <p>23   there was an asset -- it wasn't an asset</p> <p>24   discussion. We were going over to discuss how</p> <p>25   to do a business transaction along with the</p> |

1 HIGHLY CONFIDENTIAL - M. KLEIN  
2 ability to do business at Lehman. I don't know  
3 of any parameters other than that there was no  
4 sense as to whether there was going to be any  
5 assets. I mean, it wasn't a -- that wasn't the  
6 driver of certainly the -- either the roles or  
7 the conversations that I was party to.

8 Q. So you go over to Lehman. Tell me  
9 what happens there. Who meets with who?

10 A. Lehman was -- there were quite a lot  
11 of people at Lehman at the time, and again, in a  
12 similar vernacular, I didn't know many of them,  
13 if any of them.

14 There were a series of meetings, and I  
15 can't tell you who was in which meeting. The  
16 Cleary lawyers were there and the Weil lawyers  
17 were there. The Lehman professionals were  
18 there. The Barclays team were there. And for  
19 the better part of -- the early part was a  
20 question as to does this make any sense because  
21 the clock is running out. The message had been  
22 if you can't get something done and have the  
23 market believe something was going to be done,  
24 your people, your counterparties, your  
25 everything would be gone. So that was sort of

1 HIGHLY CONFIDENTIAL - M. KLEIN  
2 one piece, as I recall.

3 The second piece is, with that in  
4 mind, what in fact can you do that is rapid  
5 enough to sustain anything of any value, because  
6 the view was that if you couldn't do something  
7 quickly, there was not only no value in Lehman  
8 as an entity on an ongoing basis, but there was  
9 going to be negative value because there's  
10 always going to be liabilities, but there was  
11 not going to be anything left for the business  
12 itself.

13 So the early part was just discussing  
14 was in fact there something that could be  
15 achieved. At some point in that day, and I --  
16 I'm not by any stretch a bankruptcy expert --  
17 let me be clearer, I'm not a bankruptcy expert  
18 all in terms of my knowledge.

19 So there were definitions and  
20 description amongst the lawyers of what  
21 potential paths could be taken, and there was  
22 then a discussion of, if we were going to be  
23 doing business as Lehman and step into the  
24 operational business, if you will, of that North  
25 American, how could you do that, how could you

1 HIGHLY CONFIDENTIAL - M. KLEIN  
2 structure that, and then there was the purchase  
3 discussion, the purchase price negotiation on  
4 the purchase price. So that was the sort of  
5 path, if you will, of what took place.

6 Q. Was there a point on the Monday where,  
7 to your knowledge, was there a point on Monday  
8 where Barclays was given an opportunity to  
9 review books and records and otherwise do due  
10 diligence?

11 A. In the rooms I was in --

12 Q. Uh-huh.

13 A. -- there was not. That wasn't  
14 ongoing, and I -- there were multiple rooms, of  
15 course, that were taking place, but in the rooms  
16 that I and in my own role, my responsibility was  
17 to attempt to determine was there some kind of a  
18 transaction that could take place.

19 Q. So due diligence is not, or the fruits  
20 of it, is not within your portfolio?

21 A. I wasn't within my portfolio.

22 Q. You referred to purchase price  
23 negotiations. Were you involved in those?

24 A. I was involved in the discussions on  
25 the elements of the building and the elements of

1 HIGHLY CONFIDENTIAL - M. KLEIN  
2 the cash paid for the rights to operate the  
3 business.

4 Q. Can you explain to me what you mean  
5 when you say "cash paid for the rights to  
6 operate the business"?

7 A. As best as I can.

8 Q. Sure.

9 A. The view was that the business didn't  
10 have any value as an ongoing business; that if  
11 you were going to step in and take on 10,000  
12 employees and whatever liabilities to operate  
13 that business, when you had no idea of what  
14 revenues would be because there's no -- (A) you  
15 just have no knowledge, (B) you have no  
16 knowledge of what clients or customers think or  
17 feel of you at that point in time, you don't  
18 know who's going to stay and who's not going to  
19 stay, whether that's clients, customers  
20 counterparties, you don't know what had taken  
21 place in the week prior to that, it was a  
22 very -- there was a lot of reasons to believe  
23 that this was not an ongoing business.

24 So the view at the outset was there's  
25 no value for the ongoing business, so the

| Page 50                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | Page 51                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
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| <p>1           HIGHLY CONFIDENTIAL - M. KLEIN</p> <p>2     discussion as to what then cash was paid for,</p> <p>3     quote, the rights to do this business, which</p> <p>4     really was the transaction, is how do you end up</p> <p>5     stepping into those, if you will, operations of</p> <p>6     the brokerage business, as it turned out, the</p> <p>7     North American brokerage business. That's what</p> <p>8     I'm referring to, which became the \$250 million</p> <p>9     number.</p> <p>10    Q. That sort of anticipates my next</p> <p>11    question. If the deal was ultimately done,</p> <p>12    that's the price paid for such things as the</p> <p>13    right to use the name and license --</p> <p>14    A. Well --</p> <p>15    MR. BERNICK: Hang on. Let's let him</p> <p>16    finish the question.</p> <p>17    A. I'm sorry.</p> <p>18    Q. -- licenses, that sort of thing, not</p> <p>19    the price paid for particular assets that were</p> <p>20    purchased?</p> <p>21    A. No, that's right.</p> <p>22    Q. Were purchase price negotiations for</p> <p>23    particular assets that were purchased within</p> <p>24    your portfolio?</p> <p>25    A. No.</p>                    | <p>1           HIGHLY CONFIDENTIAL - M. KLEIN</p> <p>2     Q. Were they ever within your portfolio</p> <p>3     in the time period from Monday, September 15th,</p> <p>4     through closing on September 22nd?</p> <p>5     A. At the end of that week -- let me</p> <p>6     answer it very specifically because you said, I</p> <p>7     think, "pricing of specific assets," and at no</p> <p>8     point was pricing of specific assets in my</p> <p>9     domain.</p> <p>10    The concept of how the transaction</p> <p>11    changed in the later part of the week and, in</p> <p>12    addition to those changes, the then resulting</p> <p>13    shifts of assets and the, what I'll call the</p> <p>14    weekend of the JPMorgan-related issues I was</p> <p>15    brought into.</p> <p>16    Q. I'm going to come back to each of</p> <p>17    those pieces through the day today, but just so</p> <p>18    I can clarify this piece for the record, when</p> <p>19    you talk about the weekend of the</p> <p>20    JPMorgan-related issues were on the weekend of</p> <p>21    the 20th and the 21st after the approval</p> <p>22    hearing, correct?</p> <p>23    A. That's right.</p> <p>24    MR. GAFFEY: Can we take a ten-minute</p> <p>25    break?</p>                                                                                                    |
| Page 52                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | Page 53                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <p>1           HIGHLY CONFIDENTIAL - M. KLEIN</p> <p>2     MR. BERNICK: Sure.</p> <p>3     (Recess; Time Noted: 11:37 A.M.)</p> <p>4     (Time Noted: 11:49 A.M.)</p> <p>5     BY MR. GAFFEY:</p> <p>6     Q. Before the break, Mr. Klein, we were</p> <p>7     talking briefly about negotiations concerning</p> <p>8     purchase price of assets. To your knowledge,</p> <p>9     was there a team at Barclays who on the Monday</p> <p>10    was negotiating with Lehman about the purchase</p> <p>11    price for particular assets?</p> <p>12    MR. BERNICK: Your question assumed</p> <p>13    that there was a separate purchase price.</p> <p>14    MR. GAFFEY: Yes, it does. Apart from</p> <p>15    what turned out to be the \$250 million,</p> <p>16    apart from the price for the right to do</p> <p>17    business.</p> <p>18    MR. BERNICK: Well, that also is an</p> <p>19    assumption that the 250 was just for the</p> <p>20    right to do business.</p> <p>21    MR. GAFFEY: Okay.</p> <p>22    MR. BERNICK: I don't know what's</p> <p>23    happened in all the other depositions, but</p> <p>24    that's not a predicate that exists because</p> <p>25    of what Mr. Klein has testified to this</p> | <p>1           HIGHLY CONFIDENTIAL - M. KLEIN</p> <p>2     morning.</p> <p>3     Q. You can answer the question, sir.</p> <p>4     A. I can only give you the specifics as</p> <p>5     to what I'm aware to, which we've discussed, but</p> <p>6     the discussion was the purchase of the rights to</p> <p>7     operate the business as the business existed,</p> <p>8     and there were the two principal components,</p> <p>9     which were the 250 million and then the</p> <p>10    buildings which Lehman specifically asked</p> <p>11    Barclays to buy for which the valuation was then</p> <p>12    set by Lehman on an as-occupied basis.</p> <p>13    The business was defined as the rights</p> <p>14    to do business and any assets and associated, if</p> <p>15    you will, directly associated, liabilities tied</p> <p>16    to that business that were necessary to operate</p> <p>17    the business. I'm not aware of separate</p> <p>18    specific negotiations.</p> <p>19    Q. Does there come a point on Monday or</p> <p>20    into the morning of Tuesday when an agreement is</p> <p>21    reached between Lehman and Barclays?</p> <p>22    A. I don't know the specific timing. An</p> <p>23    agreement was reached, yes.</p> <p>24    Q. Describe for me your understanding of</p> <p>25    the components of the agreement that was</p> |



1 HIGHLY CONFIDENTIAL - M. KLEIN  
2 described already.

3 Q. Let me show you what's previously been  
4 marked, Mr. Klein, as Deposition Exhibit 19.

5 Have you ever seen that document  
6 before?

7 A. Yes, I have.

8 Q. When did you first see that document?

9 A. I'm not certain when I first saw it.  
10 I've seen it recently, but I'm not sure when I  
11 first saw it.

12 Q. Apart from reviewing it maybe to  
13 prepare for your deposition, I'm more interested  
14 in at the time that we're talking about.

15 Did you see it during the week of the  
16 15th, which is when Lehman filed, and the  
17 closing of the deal on the 22nd?

18 A. I know I've seen it prior to the  
19 meeting I had in preparation, but I don't know  
20 specifically when I saw it.

21 Q. Do you recall if you had any  
22 discussions with people from Barclays about this  
23 document, Exhibit 19?

24 MR. BERNICK: At any time?

25 MR. GAFFEY: During the week.

1 HIGHLY CONFIDENTIAL - M. KLEIN

2 MR. BERNICK: During that week.

3 Q. Between the 15th and the 22nd.

4 A. I don't recall specific discussions  
5 about the document itself. I don't recall  
6 specific discussions.

7 Q. Did you ever attend any meetings that  
8 were attended by people from Lehman and Barclays  
9 at which this document was the subject of  
10 discussion?

11 A. Not that I can specifically recall;  
12 the document itself, not that I can specifically  
13 recall.

14 Q. Do you have any knowledge of what  
15 role, if any, this document played in the  
16 reaching of an agreement on the 16th of  
17 September, the Tuesday?

18 A. I don't, with the exception of saying  
19 that there's -- there was very little data that  
20 was (A) forthcoming to Barclays. The situation,  
21 as you know, was exceedingly fluid. (B) the  
22 data that was coming was, if it was dated by  
23 more than a few seconds, it was, given the  
24 market activity, it was changing, and given the,  
25 if you will, the melting iceberg that was

1 HIGHLY CONFIDENTIAL - M. KLEIN  
2 ongoing at Lehman, it was outdated.

3 So there was a general sense that  
4 there wasn't really any data except the  
5 construct of what we were trying to achieve,  
6 which is buy the business as it was operating.  
7 But I don't know specifically -- I don't know  
8 who created this nor what they specifically used  
9 it for or, put differently, I don't recall who  
10 specifically created it or what it was  
11 specifically used for.

12 Q. You can put that document aside.  
13 Thanks.

14 To your knowledge, sir, do you know if  
15 part of the agreement that was reached between  
16 Lehman and Barclays included a negotiated  
17 discount of \$5 billion?

18 MR. BERNICK: Off what?

19 MR. GAFFEY: Off the value of the  
20 assets transferred.

21 MR. BERNICK: You can answer.

22 Q. Actually, withdraw that. Do you know,  
23 sir, if the agreement reached between Lehman and  
24 Barclays included a negotiated discount of \$5  
25 billion against the marks that Lehman had for

1 HIGHLY CONFIDENTIAL - M. KLEIN  
2 particular securities?

3 A. I'm sorry, can you ask that for me one  
4 more time.

5 (Record read.)

6 A. Just so I'm clear, because you've used  
7 a couple of words here, there were, by the way,  
8 a lot of agreements reached at various different  
9 points in time, so are you referring to  
10 something in specific?

11 Q. I'm still on the agreement that was  
12 first reached on Tuesday, the 16th, the day it  
13 was announced.

14 A. I was, to my knowledge, never apprized  
15 of any \$5 billion discount at all.

16 Q. At any point during that week, from  
17 the 15th of September, the Monday when Lehman  
18 filed, through the 22nd, when the transaction  
19 closed, were you ever apprized of the discount?

20 MR. BERNICK: Again, the \$5 billion  
21 discount?

22 MR. GAFFEY: Any discount.

23 MR. BERNICK: I think that's pretty  
24 unclear. Are you talking about financial  
25 assets?

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MR. GAFFEY: I think objection to form will suffice.

Q. Can I have an answer to the question?

MR. BERNICK: I'm trying to be --

MR. GAFFEY: I appreciate it.

MR. BERNICK: -- have you be fair with the witness. I don't really have an objection. It doesn't make a difference to me or my client. What I'm trying to do is to help make sure that things are clear to Mr. Klein.

MR. GAFFEY: Okay.

Q. Can you answer the question, sir? Do you need it read back?

A. Yes, please.

(Record read.)

A. I don't really recognize the term "discount" in the way you're describing it.

Q. During the course of the week, from the 15th of September to the 22nd of September, did you have any conversations with John Varley of Barclays about the pricing of the transaction?

A. I don't, I don't recall. I don't

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recall that -- I don't recall that I was involved in conversations with John Varley.

Q. In the course of your conversations with anyone from Barclays during the week from the 15th of September through the 22nd of December, did anyone from Barclays ever tell you in sum or substance that Barclays was going to pay a discount in price for the securities it was purchasing from Lehman as part of the transaction?

MR. STERN: Objection to the form.

MR. BERNICK: I think you did misspeak. You said December.

MR. GAFFEY: Did I?

You're absolutely right.

Q. In the course of your conversations with anyone from Barclays during the week from the 15th of September through the 22nd of September, did anyone from Barclays ever tell you in sum or substance that Barclays was going to pay a discount in price for the securities it was purchasing from Lehman as part of the transaction?

MR. STERN: Objection to the form.

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MR. BERNICK: Answer if you can.

A. Your specific comment on the discount, no one -- I don't understand the concept of what you're saying by "discount."

Q. Part of what Barclays purchased from Lehman was a body of securities; is that correct?

A. Barclays -- at which point in time are we discussing?

Q. Let's go to the closing and work backwards. Part of what Barclays ultimately purchased from Lehman was a body of securities; is that correct?

A. The final transaction, as I understand it, was the purchase of a business, and then what had been the erasing, if you will, or the exchanging of a loan against collateral that that loan existed, and that exchange of the loan against the collateral is, in a sense, a purchase of long securities.

So, yes, at that end transaction there was a purchase of a business and then the exchange of a loan against assets.

Q. Now, let's wind back to when a deal is

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first reached. We're on Tuesday, September 16th. Was there a component of that deal that provided for the purchase of long securities?

A. As I understand the transaction, other than the building, which is effectively the long purchase, the remaining assets as described to me was the net business attached to the businesses purchased. I hope that answers the question.

Q. It does. Thank you.

On Monday, the 15th, and Tuesday, the 16th -- I'm at the day of the filing and the day the deal is announced -- were you involved in any way in separate price negotiations about the long position of securities that would be included in the transaction?

A. I really don't recall that I participated in -- I really don't recall that.

Q. In that same period, that Monday, the 15th, and Tuesday, the 16th, did you have discussions with anyone from Barclays about -- withdrawn.

On Monday, the 15th, and Tuesday, the 16th, did you have any discussions with Barclays

| Page 70                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Page 71                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
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| <p>1           HIGHLY CONFIDENTIAL - M. KLEIN</p> <p>2 about the fact that one of its conditions for</p> <p>3 going forward was that the deal had to be</p> <p>4 capital-accretive to Barclays?</p> <p>5       A. I'm sorry, could you ask that again?</p> <p>6 Can I read it or do you want to ask it again?</p> <p>7       Q. You can read it or we can have it read</p> <p>8 back.</p> <p>9       MR. BERNICK: Just have it read back.</p> <p>10 This is not really an official transcript.</p> <p>11 I think it's accurate, but you should</p> <p>12 formally just let her read it back.</p> <p>13 (Record read.)</p> <p>14       A. That specific term I'm not -- I don't</p> <p>15 have a recollection of that term being used.</p> <p>16       Q. You have no recollection of Mr.</p> <p>17 Diamond ever using that term?</p> <p>18       MR. BERNICK: At any time?</p> <p>19       MR. GAFFEY: At any time with respect</p> <p>20 to this transaction.</p> <p>21       A. That particular term, but you're</p> <p>22 giving me a very specific term, but no, I don't.</p> <p>23       Q. Now, when a deal was reached on</p> <p>24 Tuesday and announced, did you have an</p> <p>25 understanding of what the structure of the</p> | <p>1           HIGHLY CONFIDENTIAL - M. KLEIN</p> <p>2 documented deal was?</p> <p>3       Let me ask you to take look at</p> <p>4 Deposition Exhibit 1, which you will see is</p> <p>5 entitled "Asset Purchase Agreement."</p> <p>6       A. Yes.</p> <p>7       Q. And let me put another question</p> <p>8 instead.</p> <p>9       Did you have an understanding on</p> <p>10 Tuesday, September 16th, that the structure of</p> <p>11 the deal was described as an Asset Purchase</p> <p>12 Agreement?</p> <p>13       MR. BERNICK: I think the question is,</p> <p>14 did you have an understanding that the</p> <p>15 transaction that had been agreed was an</p> <p>16 Asset Purchase Agreement, or styled that</p> <p>17 way, separate and apart from what he's</p> <p>18 looking at now as Exhibit 1.</p> <p>19       MR. GAFFEY: Correct.</p> <p>20       MR. BERNICK: Do you understand that,</p> <p>21 Michael?</p> <p>22       A. I think, generally speaking, I</p> <p>23 understood that the estate could sell assets and</p> <p>24 that that was the form of the transaction.</p> <p>25       Q. Now, your portfolio, as I'm</p>                                                                                                                                                          |
| Page 72                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Page 73                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <p>1           HIGHLY CONFIDENTIAL - M. KLEIN</p> <p>2 understanding it, was essentially to deal with</p> <p>3 what the structure of the transaction was how</p> <p>4 this could be achieved?</p> <p>5       A. At what point in time?</p> <p>6       Q. Well, that's what I'm about to ask.</p> <p>7 Tuesday there's a deal announced. Had that, at</p> <p>8 least at that point, had that goal been reached?</p> <p>9 There was a structure, there was a proposed</p> <p>10 transaction that would, if successful, achieve</p> <p>11 the goal?</p> <p>12       A. I'm sorry, you have asked sort of a</p> <p>13 couple of questions.</p> <p>14       Q. I know.</p> <p>15       A. I just want to be clear which question</p> <p>16 you want me to answer.</p> <p>17       Q. Well, your task is to determine</p> <p>18 whether there's a structure that will work to</p> <p>19 achieve -- to effect a transaction, correct?</p> <p>20       A. I ask you again at what time period?</p> <p>21 Because --</p> <p>22       Q. Monday/Tuesday, 15th and 16th.</p> <p>23       A. Monday/Tuesday, my role was, as a</p> <p>24 member of the team, to assist in determining</p> <p>25 whether a transaction was achievable. The</p>          | <p>1           HIGHLY CONFIDENTIAL - M. KLEIN</p> <p>2 specific structural reference is more</p> <p>3 appropriate on that weekend because on that</p> <p>4 weekend is when the structural complexity of</p> <p>5 creating a new structure was the most relevant.</p> <p>6       On the Monday/Tuesday, there was a</p> <p>7 handful of hours, so I would say all parties</p> <p>8 were involved in attempting to determine what</p> <p>9 could be achieved or couldn't be achieved.</p> <p>10       My specific role was, as I described,</p> <p>11 on that aspect of discussions on the, quote,</p> <p>12 business that could be part of the transaction</p> <p>13 and in the form of that, as I said, 250 and the</p> <p>14 building purchase, principally. Again, it's a</p> <p>15 year ago and there were people running around</p> <p>16 rooms. The rooms were designated. That's the</p> <p>17 legal room. That's the -- but there were many</p> <p>18 people.</p> <p>19       Q. Did you have an understanding on</p> <p>20 Tuesday, the 16th, when the deal was announced</p> <p>21 that part of it was that Barclays would assume</p> <p>22 certain liabilities?</p> <p>23       A. Yes. Directly tied to the business,</p> <p>24 yes.</p> <p>25       Q. Could you describe for me what your</p> |

1 HIGHLY CONFIDENTIAL - M. KLEIN  
2 understanding was of the liabilities that  
3 Barclays would assume?

4 A. As I understood it -- well, as I  
5 understand it now, thinking back, and again,  
6 it's hard to determine what I understood  
7 specifically or not, there was the specific  
8 liabilities and then general liabilities.

9 The specific liabilities were defined  
10 as the, quote, comp and cure discussions,  
11 separately the -- if you called them  
12 liabilities, the net short positions against  
13 assets because it was a net book. There was a  
14 general sense, at least in my recollection, that  
15 no matter how much you wanted to make this as  
16 clean and clear as to what you were purchasing,  
17 the concept and the fluidity of clients and  
18 customers and your ability to then go forward  
19 and undertake this business would be more costly  
20 because you are going to have to have 10,000  
21 people, or whatever the people are. They're  
22 going to do day-to-day things, they're going to  
23 cost money, and there aren't going to be  
24 revenues, so those liabilities in terms of an  
25 expense base going forward, and then,

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2 separately, you would have clients that you  
3 would hope to do business with that may have had  
4 issues with Lehman that, even though they're not  
5 your legal issues, they become commercial issues  
6 for you.

7 So the concept of liabilities, as  
8 you've asked, you were walking into a situation  
9 where conceivably there could have been a lot of  
10 liabilities, but clarifying what they were at  
11 that point in time was a question of the -- what  
12 you could and then, separately and distinctly,  
13 how much risk the Barclays team was prepared to  
14 take relative to that opportunity.

15 Q. With respect to the specific  
16 liabilities for comp and cure that you  
17 mentioned, did you have any involvement in  
18 determining what the amounts of those specific  
19 liabilities would be?

20 A. No, I don't believe I had a  
21 specific -- certainly the, even the term "cure,"  
22 to my knowledge, was a new term for me. I  
23 didn't set those numbers.

24 Q. Do you know who did?

25 A. To my knowledge, the cure payments

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2 were Lehman liabilities, so Lehman created that,  
3 if you will. With regard to the comp, I'm not  
4 clear who created that. I'm not clear on that.

5 Q. Just to close out that area, did you  
6 yourself engage in any discussions with folks at  
7 Lehman about these two specific liabilities for  
8 comp and cure?

9 A. I didn't have conversations that I can  
10 recall at all on comp with the Lehman  
11 professionals at all. The cure had to be  
12 explained to me because, again, I didn't know  
13 what it was, and it was explained to me as to  
14 what it was regarding the ongoing business  
15 expenses of the operation.

16 Q. Was it someone from Lehman who  
17 explained it to you?

18 A. There was a group of people. I sort  
19 of vaguely remember being in a very big room  
20 that looked like it was one of the dining rooms,  
21 and there was a group of people that -- I don't  
22 know how many were Lehman and how many were  
23 attorneys -- who were sort of describing that,  
24 because I just didn't understand it. It wasn't  
25 part of my -- so I don't know who all the

1 HIGHLY CONFIDENTIAL - M. KLEIN  
2 specific people were that were explaining it.

3 Q. In that discussion, in that meeting  
4 with all those people in there, did anyone say  
5 anything to indicate to you how the quantum was  
6 reached for the cure amount as opposed to the  
7 purpose for the cure?

8 MR. BERNICK: I'm sorry, the --

9 MR. GAFFEY: The amount.

10 MR. BERNICK: What quantum?

11 Q. How the quantum of the liability would  
12 be assumed for cure?

13 A. They had a list of ongoing  
14 obligations.

15 Q. Did they have it there?

16 A. I didn't -- I never was shown a list.

17 Q. Now, did you have any discussions with  
18 the Barclays folks, separate from Lehman folks,  
19 about the amounts to be undertaken in these  
20 specific liabilities for comp and cure?

21 A. I don't --

22 MR. BERNICK: Again, your question  
23 assumes for this witness -- the problem I  
24 have is, what do you mean by "undertaken"?  
25 That sounds like a contract. I think you



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don't have a predicate from this witness  
about what he understood the role of those  
two issues to be in the transaction that he  
personally was involved in.

MR. GAFFEY: Can we read the question  
back, please?

(Record read.)

A. I don't remember specific  
conversations, except for one general  
conversation that was a conversation amongst  
lawyers to discuss the construct of comp, what  
"comp" meant. Did it mean comp, bonus? Did it  
mean payroll? Did it mean severance? I  
remember a general conversation about that.  
That's the only conversation that I have a  
general recollection of.

Q. Did you come away from that  
conversation with an understanding of what  
"comp" meant?

A. Well, I, you know, having come from an  
investment banking background and having a  
perspective on what sort of total compensation  
is, I had a perspective just generally that I  
went into and came away from. I didn't come

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away from with any great new learning from that  
conversation.

Q. Now, I want to move into the next  
couple of days of that week after a deal was  
announced. Has the deal changed during the  
week?

THE WITNESS: Can I take a  
three-minute break?

MR. GAFFEY: Absolutely.

(Discussion off the record.)

(Luncheon recess; Time Noted: 12:28  
P.M.)

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AFTERNOON SESSION  
(Time Noted: 1:20 P.M.)

MICHAEL KLEIN, resumed and  
testified further as follows:

EXAMINATION BY (Cont'd.)

MR. GAFFEY:

Q. Before the break, Mr. Klein, we  
were -- I think I asked you a question along the  
lines of whether the deal changed during the  
week, so let me ask you that.

After the Asset Purchase Agreement  
that we looked at a moment ago was signed, did  
the deal change during the ensuing week?

A. Yes, the transaction in certain senses  
changed. The main transaction, which was the  
business purchase, didn't change. The concept  
of buying the business, of operating the Lehman  
Brothers old Lehman North American brokerage  
business didn't change.

What did change, however, was that  
during the week events occurred surrounding the  
various different assets and counterparties that  
under -- that were underlying the business that  
caused elements of the transaction to change,

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but the base transaction, save the adjustment on  
the real estate value to reflect the valuation  
that came in, the base transaction and the  
business construct and what was driving that  
didn't change.

Q. What were the elements of the deal  
that did change?

A. The principal elements that changed  
were a recognition that the, effectively, the  
assets that were directly aligned and related  
positions directly aligned to the business were  
changing and that both volatility, valuations in  
the market, but, more importantly, other  
counterparties were taking possession of some of  
those.

Separately, Barclays began to finance,  
if you will, some of what was the ongoing  
operations of Lehman, and that the change was  
that the construct of the transaction became the  
business purchase plus this very specific loan  
for asset hand-off, if you will, and then some  
elements of additional assets came into question  
or came into the transaction as part and parcel  
of those loan or collateral, if you will, the

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2 movement in the asset positions and the Barclays  
3 loan.

4 Q. The assets that Lehman was to deliver  
5 that changed because of volatility or valuation  
6 or counterparties taking possession, let's take  
7 that piece first, did you have -- how did you  
8 learn about those?

9 A. I, somewhere just prior to that  
10 Friday, I was apprized, one, that the Barclays  
11 had been financing the business, the details of  
12 which I became more aware of later as part of  
13 the JPMorgan weekend; but, two, that the --  
14 there had been meaningful problems in that  
15 Lehman in their delivering of what was the  
16 business that they intended to deliver had  
17 limitations, and the net result of which was  
18 what had been committed couldn't be delivered,  
19 as I understood it, and the result of which was  
20 there needed to be, one, both an understanding  
21 of could the business operate, how could the  
22 business operate, how would the business  
23 operate, and what was actually being  
24 transitioned.

25 Q. Actually, did you first learn about

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2 this situation on the Friday?

3 A. I can't recall specifically. I know  
4 that the issue became an issue post-Tuesday, at  
5 least my own focus was shifted to deal with a  
6 bigger set of questions that were on I think the  
7 minds of senior management: How do you deal  
8 with integration risk and all of the other  
9 elements that come with the transaction, and  
10 then, separately, what do they do with Europe  
11 and Asia?

12 So that was occurring during those  
13 couple of days, but sometime before Friday  
14 morning, and I don't know when specifically I  
15 became aware of it, I became briefed that we had  
16 a series of issues that had to be addressed that  
17 were very meaningful in terms of the completion  
18 of the transaction.

19 Q. Who gave you that briefing?

20 A. I don't know specifically. At this  
21 point I was dealing on a -- most of the basis of  
22 dealing were with either Archie Cox or Jonathan  
23 Hughes or Rich Ricci, but I can't say  
24 specifically who gave me the briefing or whether  
25 it came from attorneys involved. I just don't

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2 know specifically.

3 Q. And the loan for asset hand-off you  
4 were talking about, the Barclays financing of  
5 Lehman, did you have any more specific  
6 understanding of the nature of that financing?

7 A. I later learned, because of the  
8 JPMorgan-related matters, quite a lot. At the  
9 time, I wasn't party to those dialogues. I knew  
10 that there was an offer of support and I was  
11 then briefed on the quantum of the loan and the  
12 issue embedded in the size of capital that they  
13 had put up at that stage, but I was -- but that  
14 which I learned later about the JPMorgan and  
15 other elements of the Fed and so forth I learned  
16 subsequent to that.

17 Q. The financing that you're referring  
18 to, did you learn whether it was -- what its  
19 form was? Was it a secured loan? a Repurchase  
20 Agreement? anything like that?

21 MR. BERNICK: Whose financing?

22 MR. GAFFEY: The Barclays financing of  
23 Lehman.

24 A. I don't, even in hindsight,  
25 characterizing it specifically, I couldn't

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2 characterize it specifically.

3 Q. So what, if anything, were you asked  
4 to do in connection with this new set of  
5 problems?

6 A. I was asked specifically to -- well,  
7 let me back up for a moment.

8 The problems that occurred were of a  
9 magnitude that they impaired the going-forward  
10 nature of the transaction. The movements of  
11 assets and, of course, data was very hard to  
12 come by and very volatile, the markets had of  
13 course become even more volatile and even more  
14 risky. The transaction was now public, but by  
15 the same token, there was a real question as to  
16 what the deliverables, not just the deliverables  
17 in terms of pure assets, but could the business  
18 continue to operate, operate out of the  
19 building, operate with the people, operate with  
20 the systems, operate in that way.

21 The question, though, that was put  
22 directly on the table was, given that a  
23 substantial amount of the, quote, net book that  
24 was attached to the business that was the  
25 business transaction had gone away and the

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question put forward was, what do we do?

The first -- one of the discussions was, well, maybe we just don't have a transaction that has any assets at all. I mean, this is a business purpose. If the assets are getting taken by others in different ways, just do a business deal. And I think that's how I learned that there had been the loan that had then been provided.

The second part I was then asked to do was to make a specific request of the parties at Lehman to find more assets to rectify what had been the substantial movement and substantial reduction in the transaction that had taken place.

Q. Did you make the request of the parties at Lehman?

A. I made the request. I'm not sure that it was just myself who made it, but I was part of requests that were made. And I don't know who all was involved in sort of the receipt of those requests, but it resulted in a series of conversations on that Friday morning prior to the court.

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A. Well, I can only describe what I'm aware of, and what I'm aware of is that the transaction of a net book which had long and shorts and could be managed over time had migrated in the two ways I described: One, substantial of those assets had been removed; secondly, it wasn't clear at that stage what assets had been necessarily moved into which pockets, but perhaps most importantly, because it was now a net asset purchase, it was a -- it was putting all of your capital up against just assets that you're buying in the midst of this market calamity, the \$45 billion of capital, which that was never -- that was never the contemplation of the transaction, to my briefing. To my briefing, we were stepping into the shoes of operating the business.

So the request was what do we do, and the first question was, is that -- are those assets sufficient for that loan, and that was the first debate. And to my knowledge, there was a fairly significant disagreement as to whether even the remaining assets were sufficient against the collateral of that loan.

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Q. Did you have a particular person on the Lehman side who was your point person?

A. Well, originally it was the Mark Shafir connectivity. That's the beginning. From that point forward, after the Tuesday event, it, first of all, became far more fluid in the sense that there was an agreement out there; secondly, there was no particular counterpoint at that point in time, and frankly, there was no need until that event occurred for there to be a specific counterpart for me. The others may have had, because of executional things that were taking place, other specific counterpoints, but I don't think I had -- I don't think I could define a specific counterpoint at that point.

Q. Did you learn that Shafir left during the week?

A. We did learn that Shafir had left during the week, which obviously made for complexity in just in that dealing.

Q. So describe for me as best you can, please, how, in what circumstances the request was made for more assets?

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And I wasn't an evaluator of those assets or a participant in those evaluations, but there was that, if you will, debate over can we even get our loan proceeds back, so to speak, and there was a disagreement on that value. I was at one point in a room where that was communicated between different parties, that this -- there's a disagreement on that.

I'm not sure if I'm answering the question that you're --

Q. You were. Thank you.

A. The net effect of that was, because there was no fundamental agreement and there was both parties taking views, that the agreement was struck that the loan against the assets were essentially going to be equivalent in value, to my understanding.

The problem that that then created was, because Barclays was buying an ongoing business and, in buying an ongoing business, had expenses that would be coming and no likely revenues and significant losses during that period, as well as the liabilities that they were assuming that we've discussed previously,

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they had a problem in the sense that they now had \$45 billion of capital as a purchase, which was not the original intention, as opposed to what was a purchase and then net assets that came with the business. And they were put in a position where they would have to go back to both their board and their regulators with what was a substantial hit, if you will, not just from the original transaction but to their overall capital base. They couldn't close the transaction on that basis, as explained to me, and as explained to me, more assets were needed to fill that. And we delivered the message that, is there anything left that can fill this gap that has been created as a result, and that was the message we delivered.

Q. Who was it who -- let me just back up. Had you had any personal involvement in the decision that led to Barclays financing Lehman?

A. No, not that I'm aware of, no.

Q. Did you have any awareness about the fact that Barclays had decided to finance Lehman in this way at any time before these problems were outlined to you?

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obviously Shafir was gone at that point in time.

There was a -- as part of that rectification, I think Ian Lowitt came into play as well. I can't tell you that they were all in the room for that discussion, but those would be the principal participants that we dealt with as we tried to resolve this.

Q. In trying to resolve this, did you also deal with either Paolo Tonucci or Martin Kelly?

A. Not that I can recall. Frankly, I don't -- I don't recall even having heard the name Martin Kelly before, but I don't want to overstep my statement. I just don't recall.

Q. And this discussion that involved McDade and Kirk, who was there for the Barclays side?

A. Again, I want to be clear. As I said, McDade and Kirk were the individuals we were principally dealing with. I don't know who was specifically in the room when the first message was delivered that this was an issue or -- because this was very fluid.

MR. BERNICK: I have to tell you, Bob,

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A. In a general sense, and again, this is recollection of a short window in a general sense, they were trying to be supportive because once they announced the transaction, they were trying to be supportive to preserve value of the ongoing business.

The specifics of that, quantum and the form, as I said, I believe I learned -- well, I know I learned a lot over that following weekend, the 20th weekend, but prior to that, no, I was not -- I was not briefed on that.

Q. Now, you said that you were in a room where the disagreement about values was discussed?

A. Right.

Q. Who was present? Is this one meeting you're describing?

A. I'm only aware of one conversation --

Q. Okay.

A. -- that occurred on Friday that I was sort of in part of, and the only people at this stage that we were seeing or that I was seeing -- "we" is too broad -- from Lehman on a periodic basis was McDade and Alex Kirk, because

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you know, maybe it's clear to everybody else. You got into this discussion of meeting by talking about the discussion about differences in values, and I'm not sure that -- I don't know exactly what meeting the witness is talking about. He talked about a meeting where a request was made.

MR. GAFFEY: Let me see if I can clarify this.

Q. You spoke, Mr. Klein, about the fact that there was a fairly significant disagreement as to whether the collateral was sufficient, yes?

A. I said that there was a disagreement over the value of that collateral versus that loan.

Q. And you had not been involved in the valuation?

A. No.

Q. But that you found yourself in a room where there was some disagreement about whether the collateral was sufficient, and that was discussed?



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A. That's right.

Q. That's the meeting I'm asking about. Is this the meeting on Friday morning?

A. Again, I don't recall which specific. I know that on Friday we had to clean up the issues and or not, I mean, it was that much of a make-or-break event, and the issue as it had been described to me by my client was we have a problem in that this is, given the significant removal of positions and obviously the impact as a result on the, quote, business deal, we need to be very clear that (A) this is a different -- putting 45 billion of cash capital now to buy assets and, secondly, we don't have the same value. So I was instructed to go in and express that we needed more assets. So that's the meeting I'm referring to.

Q. And who gave you those directions?

A. At this stage, the principal people I was dealing with were Rich Ricci and Archie Cox, and Jonathan Hughes from a legal perspective was around most of the time during this time period, and the direction would have come from some subset of that team.

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term, but the back end of Barclays in terms of how they were looking at the construct for themselves, I don't know what the accounting was, but I was told you need to go in and get more assets, this won't work.

And I think there was a great degree of trepidation. It was already complicated enough because the integration issues. It was already complicated enough because of the market issues. It was now public. It was complicated enough because of the Europe, Asia, everything separating away. It was now already a very complicated event to have what was then this meaningful change and, thus, have a hit to them and that additional incremental risk, and in addition, owning the risk on disposing of what were this 45 billion of securities, there was quite a lot of fear, and at that point there was a sense that this transaction just might not occur.

Now, of course, that happened many times over the couple of weeks, the sense that this might not occur, but it was very acute, and I was told you need to -- we need to make it

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Q. So did you make that request? Did you come in and say -- did you, in sum or substance, did you make it known to Lehman that you needed more value?

A. Well, I made it known to the parties that were involved that there needed to be more assets, because if there weren't more assets, the transaction couldn't take place.

Now, to say "I," it was made known and I was part of discussions that were around what could solve that gap. I don't know that I was the person that specifically stated it or not.

Q. How big a gap had to be made up?

A. The quantification of what I was told was that we had an understanding that the value of the assets, if you will, the loan, the \$45 billion loan, was -- the collateral base could not be assured that that would solve that; that, secondly, we then needed to go and get more assets. No one gave me an instruction that said you need to get X or Y, but we need to go get more.

I wasn't, because I wasn't involved in the, if you will, the -- I may not use the right

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very clear if there's not other assets, we can't get this done.

Q. You have to make it very clear that if there are not more assets, this won't get done, how do you do that without being able to tell Lehman this is how much more we need? Does that present an obstacle here?

A. I don't want to hypothesize.

Q. Let me try this another way. Your instructions are to make it clear to Lehman that if there are not more assets to be added, that it's possible the deal won't get done; is that correct?

A. My recollection of both those discussions and at least the instructions that I got were this transaction was going to fail because of what was the diminution in the original plan. Now, that's -- those are the communications that I was part of.

Q. And were you part of the communications to Lehman of the fact that additional assets had to be added?

A. I think I said that I was in a room where that was discussed, and again, I don't

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2 know who specifically made which statements, but  
3 I was in a room in that and it was made clear  
4 you need to find what else there may be because  
5 this is a problem.

6 Q. And in the room where these  
7 discussions were had, was anything communicated  
8 as to how much more there needed to be added in  
9 order for the deal to close?

10 A. I'm not aware that a specific number  
11 was put forward. I'm not -- I'm not clear that  
12 a specific number was put forward and I'm not  
13 clear that there was a sense that there was any  
14 other assets and I think it was a good faith,  
15 which is why I raised the point earlier that  
16 this question that certainly I had put forward,  
17 should we do something without assets, which, as  
18 I said, caused me to learn a bit more about what  
19 was this loan question. But no, I'm not aware  
20 of a specific number that was put forward.

21 Q. You mentioned the number \$45 billion.  
22 Was that your understanding of the amount that  
23 had been advanced by Barclays to Lehman in this  
24 financing?

25 A. My recollection of the, quote, loan

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2 that Barclays had exposure was 45, although for  
3 some reason I have in my mind that occasionally  
4 it was 45.5, but I may not be getting that  
5 exactly correct.

6 Q. Did you have an understanding one way  
7 or another as to whether the loan of 45 or 45.5  
8 was collateralized by security in excess of the  
9 amount lent?

10 A. I was only briefed that it was  
11 collateralized, that it was a secure -- that it  
12 had securities attached to it. I didn't get  
13 into the particular details, but I will say that  
14 what I was briefed on as part of this was that  
15 there was real concern on the Barclays side that  
16 the assets that they were going to be buying  
17 could not be valued or liquidated at that price,  
18 at that value.

19 Q. Did you gain an understanding what the  
20 Lehman side of the story was? What were they  
21 saying with respect to the value of the assets?

22 A. In the rooms I was in -- and again, I  
23 can only recollect this being occurring in or  
24 around the frenzy, if you will, or the rush --  
25 best way for me to say it is I don't remember

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2 other than the sort of Friday discussions that  
3 we're discussing.

4 There could have been other  
5 discussions that I'm not aware of that there was  
6 a disagreement as to whether it was -- and the  
7 disagreement was a plus or minus the 45. This  
8 was a, you know, do you -- are you selling these  
9 today? Are you selling these tomorrow? Are you  
10 holding them for a week, and if you're holding  
11 them for the week, are they worth more than the  
12 45?

13 I didn't remember anybody saying this  
14 is worth 90 and this is worth zero. I think it  
15 was -- and the rationale and the reason why the  
16 agreement was reached that it was worth the loan  
17 was it was a plus-or-minus discussion point.  
18 But I wasn't part of the valuation on either  
19 side, so I don't, I mean, I don't know what the  
20 underlying background of those statements were.

21 Q. I understand that you're not -- you  
22 don't have the underlying data as to who's right  
23 or who's wrong in the discussions, but my  
24 question goes to what was the nature of the  
25 discussion that you heard.

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2 Was there a range of disagreement that  
3 you heard between Lehman and Barclays as to the  
4 value of the underlying collateral?

5 A. I only, as I think I said, I think the  
6 only thing I can recollect was that they had  
7 differences as to whether you sold it today,  
8 held it for a period of time, and it was a plus  
9 or minus the loan amount. It was not -- people  
10 weren't -- this wasn't, to my knowledge, because  
11 it certainly didn't involve me, a ten-hour  
12 discussion over, you know, multiple different  
13 you're here and I'm here. This was there's a  
14 difference of opinion, what do we do, and a  
15 general understanding that it's not that big of  
16 a difference, so let's move forward because we  
17 have to move forward. But that's just the part  
18 that I was party to.

19 Q. I need to push for a little more  
20 detail on this, the scope of the difference, if  
21 I could. The request, the demand, whatever verb  
22 you want to use, is made from Barclays to Lehman  
23 to add more assets so that the deal can close,  
24 correct?

25 A. The -- not precisely correct. There

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was a clear understanding that the, quote, net book value transaction could not occur, so what you had was a loan against assets. There was a message that that loan might not be fully satisfied by those assets and there was a difference of opinion, plus or minus.

Secondarily, there was a view that because of all of the risk in liability and the losses that were likely to occur, there needed to be more assets from Barclays' perspective to complete the transaction. So those messages were messages that were delivered and I was party to at least one conversation on those subjects.

Q. And a while ago you told me one of the issues was that it was probable that Barclays was going to have expenses after the transaction. Was the request for more assets to cover those expenses?

MR. BERNICK: I think it's unclear what the expenses were that the witness was referring to with his prior answer.

MR. GAFFEY: That's a good point.

Q. What were the nature of the expenses

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that were at issue?

A. As I understand it, the -- and I wasn't -- there was a whole team of other bankers that were working for Barclays and doing work for board and board presentations and so forth, that wasn't my agreement. But in looking at this transaction, one had to look at the accounting day one and going forward, and clearly in a world where there's focus on capital and focus from the FSA, potential both day one as well as long-term losses were important.

My understanding was that there would be people that were being employed and it's not clear what the revenue streams would have been going forward. So when I say expenses, there were just operations of the business that -- because you wouldn't be up and running.

Now, that became more acute even later on June 20th because of the JPMorgan event and the shutdown, but that's what I was referring to.

Q. So this might be a bit simplistic for me to say, but was the idea that now that

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Barclays needed to have some, at closing, needed to have some equity to support its ongoing expenses once it took over the business?

MR. BERNICK: Answer that question, if you can. You've got equity, ongoing expense, continuation of business. I don't want to -- you just answer that if you can.

A. Maybe ask it again because I -- does someone want to --

Q. Was the idea now that Barclays needed to have some, at closing, needed to have equity to support its ongoing expenses once it took over the business?

A. I wouldn't -- I don't think I would characterize it that way. I wouldn't characterize it that way. The transaction from Tuesday onward changed meaningfully, and what I was told was that, because of that reduction in the assets and in the asset value, the transaction didn't work for my client and that, as such, I had to work with Lehman to get more assets as part of that.

How that all fit into what was the look, if you will, that Barclays had, you'd have

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to ask the Barclays folks. The direction I got was that this change was meaningful enough that it had to be fixed.

Q. So your job is go get more?

A. That's right.

Q. And you don't have knowledge as to what Barclays' analysis was of why it needed more? You understand --

MR. BERNICK: I --

MR. STERN: Objection to the form.

Q. Your instructions from your client are go to Lehman and get more assets, correct?

A. My instructions from the client were this is a very big change, the buying an ongoing business with a net book has now changed, because given what's taken place with counterparties taking assets, given what's taking place, we now don't have that transaction. It's now become a far greater riskier event for them in that they're putting up this \$45 billion of capital and buying long assets and no one wants to buy that much long assets. This wasn't intended to be an asset transaction. It was a business that they were

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stepping into.

The concept of buying long assets in that market was great risk, and one had to look at how I value it and how I sell it. That was sort of one comment that was given to me, and the other comment was, given the moving pieces that had taken place with this and given this risk, we need more assets as part of the transaction to replace what had been taken out of the transaction for us to move forward. And that's the task that I embarked upon.

Q. And no one from Barclays tells you how many more assets are needed to replace what had been taken out of the transaction? I'm pushing for a target or a number if you have one here.

A. I don't -- one, let me just say I'm trying to recollect as much as I can recollect.

Q. I understand.

A. Two, I was a part of a team which I had sort of narrow responsibility. Third, I wasn't running any kind of Barclays pro forma model nor was I doing those presentations to the board. So it's not a, you know, it wasn't part of what I was doing.

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The concept of this is a very big problem when your client says this is a very big problem and you're told to help go solve that problem, you go solve that problem. The quantum of that problem, I think as the assets came forward, became clearer as to when I got responses that, "Here's what's available, can this get us over the finish line?" became clearer, but I don't recall someone saying, "I need to get" -- perhaps I'm not recollecting every conversation. I just don't remember somebody saying, "I need to get ..."

Q. Need to get a particular amount?

A. Yeah.

Q. Did anyone on the Lehman side of this dialogue ask how much more does Barclays need?

A. I recall the principal focus that was going on at Lehman was, here's what we have, does this help, and I think it was a real -- it seemed to me in good faith they were trying quite hard to find what was there, and basically the two things they found were the two things they put on the table, which were this so-called bag of hammers, as it was related, and then this

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custodial account balance.

Q. I'm going to ask you to solve one of the great mysteries in the case. Do you know who used the phrase "bag of hammers"?

A. It's -- I had never heard it before. It has to be a trading term, so I'm presuming it came from one of those two, either Bart or Alex. I don't -- I wouldn't want to attribute such a --

Q. It's not a bad phrase. I've just been wondering who was its author.

Were more assets added to the deal?

A. Well, let me be specific. Substantial assets were reduced from the transaction, but from the point of the Friday discussion, there were those two asset categories brought into the scope of the transaction.

Q. Okay.

A. So there were certainly not more assets added on an additional basis, but those two categories were brought in to solve the problem at hand.

Q. What was the value in total of those two categories?

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A. I don't know today nor do I know then what the real value is of those.

Q. Did you have a view at the time as to what the value was that was added on the Friday?

A. I only know what was told to me. I don't know what was the reality of it because I never saw any of the securities or the analysis. I was told that the bag of hammers was 1.9, as I recall, and I was told that there would be more than a million and potentially more than a million and a half in this custodial account.

That being said, to be quite precise, there was also an e-mail given that described the specific agreement and willingness, I think by an S.E.C. official, to release a number that was more like 750 of that custodial account. So my understanding of the value that was dealt with as part of that conversation would be those components, and those components then had to be digested as: Do they exist? What do they mean?

I didn't have any involvement in the work as to do they exist, what do they mean, what is a bag of hammers, what is that involved in, but in discussions with my client, their



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2 determination then was that was suitable in  
3 order to go forward.

4 So, to your question before, it became  
5 then clearer to me what the gap was because  
6 those were suitable to solve that in that  
7 morning.

8 Q. The last part of your answer, though,  
9 sir, is an inference. Did your client tell you  
10 that had been the gap or you inferred --

11 A. No.

12 Q. -- from the fact that they said they  
13 would go forward that it was?

14 A. There was an agreement to go forward.  
15 That's -- there's -- I don't recall that I saw  
16 the accounting before or after or subsequent for  
17 it, so I don't know what their internal  
18 machinations or gap was, but when I delivered  
19 that as part of the discussions with the team  
20 and it was discussed, and the lawyers then  
21 reviewed what that meant, and I tried to  
22 determine if I can figure out exactly what time  
23 each of those -- I just can't figure out when  
24 each of these things occurred, but certainly  
25 before the bankruptcy court that -- those two

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2 asset discussions came into play. Barclays was  
3 prepared to go forward with the transaction,  
4 which was the relevant issue at hand.

5 Q. Did you attend the bankruptcy hearing?

6 A. I did attend the Friday bankruptcy  
7 hearing.

8 Q. Correct.

9 A. That's the only one I would have  
10 attended, yes.

11 Q. And the bankruptcy hearing took place  
12 in the late afternoon on Friday? It started in  
13 the late afternoon on Friday, correct?

14 A. I don't know specific time, but yeah.

15 Q. Was the issue resolved before you left  
16 to go to bankruptcy court?

17 A. Certainly in concept I'm aware that  
18 there had been an agreement reached, otherwise  
19 there was no business to go to bankruptcy court.  
20 Anything that happened between my leaving and  
21 going down to court I can't tell you, but there  
22 was an agreement reached.

23 Q. That's a fair comment. I guess  
24 there's two pieces to this. One is the  
25 agreement reached in concept to add more assets,

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1 HIGHLY CONFIDENTIAL - M. KLEIN  
2 and then, secondly, there's the point where your  
3 client says enough assets have been added, we'll  
4 go forward. My question goes to the second  
5 part.

6 A. My recollection of my own sort of  
7 whereabouts was I was told that that worked and  
8 that we should go down to court to get it done.

9 Q. Now, just to clarify a little piece of  
10 your testimony, you were talking before about  
11 the funds that the S.E.C. had to -- the release  
12 the S.E.C. had to approve, you were speaking in  
13 terms of millions. Did you mean to say you were  
14 told there would be a billion to a billion and a  
15 half?

16 MR. BERNICK: Wait. You said the  
17 release that the S.E.C. had to approve.

18 MR. GAFFEY: Let me put some  
19 terminology in the here.

20 Q. The custodial accounts you were  
21 talking about, does the phrase "15c3" ring a  
22 bell?

23 A. It does, because I remember being  
24 confused as to that political action committee  
25 other thing, which is what -- somebody may know

1 HIGHLY CONFIDENTIAL - M. KLEIN  
2 what that is, but I --

3 Q. You joined everybody else in the room.  
4 We've all learned what 15c3 is in the last  
5 couple of weeks. But you recall the term "15c3  
6 funds" to refer to --

7 A. I do.

8 Q. And the amount of 15c3 funds that was  
9 at issue was in the billions, not millions?

10 A. In the billions.

11 Q. A billion to a billion and a half?

12 A. A billion to 2 billion at one point,  
13 but there was an e-mail, and I only remember it  
14 because there were so few pieces of actual data  
15 that had been sort of handed in any meeting that  
16 I was part of, but I just remember that that  
17 e-mail existed and that there was a reference to  
18 somebody from the S.E.C. agreeing that a certain  
19 amount could be released.

20 And I have a recollection, although I  
21 don't have it specifically and I haven't  
22 subsequently seen that e-mail, I don't think  
23 I've seen that e-mail since that moment, was  
24 that it was at least 750, but I don't -- 750  
25 million, at least 750 million.

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2 to be careful, because the term "OCC" and all of  
3 the different initials came up at various points  
4 in time. I just don't specifically recollect an  
5 OCC discussion. I just don't specifically  
6 recollect that.

7 Q. As a general matter, the effort to  
8 find additional assets, does it continue on  
9 Saturday and Sunday, the 20th and 21st?

10 A. No, not that I -- I was not --

11 Q. As far as you know.

12 A. As far as I know, the only directional  
13 asset change, as far as I understand -- well,  
14 let me back up. Leaving aside every issue  
15 relating to what took place with the JPMorgan  
16 and the shutting down of the business, which  
17 later became very clear, leaving aside that for  
18 a moment, which may be hard to do, but it was  
19 not part of my understanding or vernacular  
20 leading into the bankruptcy Friday event, so  
21 leaving aside that as to the core transaction  
22 between the business transaction between  
23 Barclays and Lehman, which was the 250 plus the  
24 buildings, the related assets attached to it,  
25 the changes that were made were the changes that

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2 occurred Tuesday to Friday.

3 Subsequent to that, there was a -- or,  
4 somewhere on the Friday time period late, I  
5 think, the appraisals were delivered, so there  
6 was a change in value in the real estate as the  
7 splitting of the two appraisals took place. The  
8 only thing that I can think of right now, and  
9 maybe I'm -- but the only thing I can think of  
10 right now is the 15c3 give-back.

11 So there was no new assets being  
12 searched for. In addition, there was some  
13 discussion over, quote, a brokerage fee  
14 additional discount on the real estate, and that  
15 became a -- that became a contentious point, so  
16 Barclays gave up on that, quote, discount.  
17 Those are the only elements that I can recall,  
18 again, except for the moving pieces relating to  
19 solving the JPMorgan-related matter.

20 Q. In your discussions with your client  
21 about the need for additional value to be added  
22 on the Thursday or the Friday, what we've been  
23 talking about, did Barclays in sum or substance  
24 tell you that they needed a buffer of some kind?

25 A. I don't think -- I don't think the

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2 term "buffer" -- I don't think I ever recollect  
3 the term "buffer" being used.

4 Q. Is it fair to say that your  
5 understanding by Friday is that because of this  
6 financing, this loan that you have talked about,  
7 that the mechanism of the deal had changed?

8 A. The basic transaction parameters to  
9 buy the business hadn't changed. The purpose  
10 from Monday onward was to step into the shoes of  
11 operating the Lehman, if you will, North  
12 American business, obviously being clear that  
13 some of the activities, including customer  
14 activities and all those that occurred before  
15 Barclays was not going to take part in, but the  
16 business, ongoing business, that transaction  
17 didn't change.

18 So the sum and substance of the  
19 transaction that was the meaningful transaction  
20 didn't change. What happened was the related  
21 assets that were going to come with those  
22 businesses effectively went away, so there then  
23 was this incremental additional event that took  
24 place, which I have always thought of as then  
25 being something different, which was you now

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2 have a loan that you have to satisfy the loan  
3 and you are going long 45 billion of securities  
4 in this marketplace. So the main transaction  
5 and the substance of that transaction didn't  
6 change, it's just that the related assets that  
7 would have come with it were no longer the same  
8 or comprehensible and a, if you will, distinct  
9 event in terms of the loan and the collateral  
10 for that loan was undertaken.

11 That's how I understand it. Now, that  
12 may just be how I understand it.

13 Q. To your knowledge, your personal  
14 knowledge, were these differences regarding the  
15 related assets documented in any way? Was there  
16 a written agreement reached?

17 MR. BERNICK: I'm sorry, when you say  
18 "related assets," I don't understand what  
19 your focus is now.

20 Q. This addition of value on Friday, were  
21 any written agreements, to your knowledge,  
22 reached with respect to the addition of these  
23 assets?

24 A. Which assets are you specifically  
25 referring to now?

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A. I don't think I did. I don't --

Do you remember where the closing was?  
Maybe that will help me.

Q. I don't know. I know it was on Monday morning, very early Monday morning.

A. I don't think I was physically there at the closing. I don't recall being there.

Q. And just to sort of close out a couple of areas, I think I heard you say before, but I want to be clear on that, you were not involved in any of the presentations made to the Barclays board about this transaction; is that right?

A. No. No. There had been, early on on the -- at the very beginning of the week on the Thursday I believe there was a board call that I sat in and listened to. Beyond that, I wasn't party to board presentations, and I don't recall seeing the board materials either that were presented beyond that.

So the Thursday -- I think it could have been Thursday, it could have been Friday -- conversation was on that early structure that we discussed, which related to the Lehman/Spinco separation, the sort of pre-bankruptcy version.

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Q. You yourself didn't make any presentation to the Barclays board? You weren't there?

A. There might have been a question put to me. I don't -- I don't believe that I was called upon. I certainly, because I was just a consultant, a person, and because they had a series of other bankers that were giving opinions and doing work and corporate brokers that were doing -- they had other people doing things, I wasn't --

Q. I'm putting before you, Mr. Klein, what previously has been marked as Exhibit 381, an e-mail chain that starts on the second page with an e-mail from you to Rich Ricci dated Friday, September 19, at 21:31 that says, "Rich, three-ring circus. Two overflow rooms."

Could you read, sir, up that chain sufficiently to sort of familiarize yourself with that.

(Document review.)

A. Okay.

Q. Just in terms of the where and when of this, I'm assuming from the time and the date

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that you're in the bankruptcy court when this e-mail exchange is taking place; is that right?

This will put you on the Friday night.

A. I think it would have to be.

Q. And is it correct, then, that Mr. Ricci was not in the bankruptcy court?

A. I don't believe he was.

Q. And then the next up in the chain is an e-mail from Mr. Ricci to you saying, "Alex tells me they're killing us on 1.9 bucket and not paying anything for it. What gives?"

Can you give me any greater detail of what that's a reference to?

A. I think, as you see my next e-mail, I don't follow. I don't -- that wasn't a conversation that I had been in that he was relating to.

Q. You also say, "I don't follow. We are being given 1.9 billion of face." What's the 1.9 billion that you're referring to?

A. The only 1.9 that I'm aware is the bag of hammers. The only 1.9 that I'm aware of in the transaction.

Q. And then what follows in the two

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subsequent e-mails are, Ricci to you: "He told me creditors were squawking. Let's get it then." And then you to Ricci: "We are meeting creditors shortly on this."

Do you see that interchange?

A. I do, yes.

Q. Can you give me any more detail of what's meant or what you understood to be meant when Mr. Ricci wrote that the creditors were squawking?

A. I don't, because I don't know -- I don't -- I don't know the Alex Kirk conversation. I do know that during the court the Weil team pulled a bunch of folks aside, including creditor folks, to explain the transaction in sort of elongated, elaborate sidebar.

So I assume that that's what my comment back is referring to, but I don't -- I wasn't aware of what the Alex conversation was because I wasn't party to that.

Q. Did you participate in the elongated sidebar?

A. No, I was in the -- it was a very -- I

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2 hadn't been to bankruptcy court before. I was  
3 in the very, very last row.

4 Q. I can tell that from your first note  
5 here: "Three-ring circus."

6 A. And there were people calling in as  
7 well, which I was -- I had never seen in court  
8 before. But I was in the very last row, and as  
9 a result, I didn't have the ability physically  
10 to get to the front.

11 So the sidebar conversation that took  
12 place, there had been I think a discussion that  
13 the lawyer from Weil would brief various parties  
14 prior to the event, which they did in that  
15 sidebar, but I was not -- I don't think I was  
16 physically there because I think I was  
17 physically separated, I believe.

18 Q. Could you hear what was said?

19 A. I -- no, I was -- I was literally in  
20 the last row.

21 Q. So you know there was a sidebar, but  
22 you have no personal knowledge of what was said  
23 in that sidebar conversation?

24 A. I was told that there would be a full  
25 debrief that was sort of part of what they had

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2 planned. I mean, I left and went down to the  
3 court. I was told that they would come down to  
4 the court, that they would physically debrief,  
5 and then there would be a hearing.

6 So I suspect that that's what that's  
7 referring to. My, best as I can recollect, is  
8 that's what that's referring to, but I don't --  
9 I wasn't party to that.

10 Q. Was there a point when you arrived at  
11 bankruptcy court where you gave a briefing to  
12 lawyers for either Lehman or Barclays about the  
13 then current status of the agreement?

14 A. I don't -- I don't think -- I don't  
15 believe that I -- I don't know. I don't know.  
16 I don't know who -- I rode down by subway with  
17 this chap Gerard LaRocca, who I hadn't known  
18 before, who knew the subway system quite well,  
19 and then I went in and was pulled to the back  
20 and I sat with Archie Cox and everybody else was  
21 up in the front.

22 I don't really recall who I spoke to  
23 when I walked in. The only substantive thing  
24 that I was briefed on that I know about was  
25 the -- this agreement on the splitting the

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2 difference on the real estate value because I  
3 had to step out and call -- I think I called  
4 Rich to tell him and make sure he signed off on  
5 that because that was a, sort of an open issue.

6 Q. You didn't ride down to court in the  
7 car with Mr. McDade?

8 A. No. I definitely took the subway.

9 Q. Mr. Klein, I'm putting before you what  
10 we previously marked as Deposition Exhibit 382.  
11 Take a look through it, please.

12 (Document review.)

13 A. Okay.

14 Q. Now, we've moved, just by way of date,  
15 we have moved now to Saturday, the 20th, and the  
16 earliest e-mail here is on Saturday evening at  
17 8:44, where you write to Mr. Ricci and some  
18 others: "Team, we need a brief call with Rich,  
19 subject to his schedule, to review the language  
20 regarding the expense accruals and to ensure  
21 that BarCap has appropriate flexibility to run  
22 their business as they deem appropriate."

23 What language regarding expense  
24 accruals were you referring to in this e-mail?

25 A. I don't remember specifically the

1 HIGHLY CONFIDENTIAL - M. KLEIN  
2 e-mail, but I do recall a conversation I think  
3 we talked about earlier today where the lawyers  
4 were describing the definition of  
5 "compensation."

6 That's the only conversation that I  
7 recall that would have had lawyers and  
8 otherwise. I don't remember sending this  
9 specific e-mail, but that's the only  
10 conversation I can recall that would have been  
11 related.

12 Q. And can you add any more detail beyond  
13 the e-mail, sir, to what you would have meant  
14 regarding flexibility, "appropriate flexibility  
15 for Barclays to run their business"?

16 A. I can't. Rich was, at this stage, the  
17 principal client and he asked me to arrange a  
18 call with people that were involved and I  
19 arranged the call, so I can't -- I can't give  
20 you anything more.

21 Q. Beyond arranging the call, Rich Ricci  
22 is the principal client, but beyond arranging  
23 the call, did you have any involvement of that  
24 issue -- involvement in that issue, that is, the  
25 expense accruals and BarCap's --



1 HIGHLY CONFIDENTIAL - M. KLEIN  
2 A. No. No. No. No. The only subject  
3 matter that I'm aware of that was covered was  
4 this, you know, definition of "compensation."  
5 That's the only thing that I'm aware of at all.

6 Q. Now, do you know how much value was  
7 transferred to Barclays in the deal once the  
8 issues were resolved with the addition of the  
9 bag of hammers and the 15c3?

10 MR. BERNICK: I think you --

11 A. I don't understand the question.

12 Q. I'm looking for a total here. Do you  
13 know how much value was agreed to be transferred  
14 to Barclays?

15 MR. BERNICK: Go ahead and answer it  
16 if you can. "Value" is a judgmental thing,  
17 so if you can give it some factual context,  
18 that would be helpful.

19 A. I don't really view that there was,  
20 quote, value transferred. If you're referring  
21 to the Friday events --

22 Q. Uh-huh.

23 A. -- where there was the clarification  
24 of the issues relating to the assets going away  
25 and this 45 billion loan and then the bag of

1 HIGHLY CONFIDENTIAL - M. KLEIN  
2 hammers and so forth, I don't view that as,  
3 quote, value transferred.

4 I view that there was a hole in the  
5 transaction and that hole was filled, and the  
6 only actions that occurred that would have  
7 filled that were the bag of hammers and the  
8 15c3. As I said, I think subsequently there was  
9 the change in the real estate midpoint  
10 valuation, and then subsequent there was the  
11 give-back of the certain 15c3.

12 So the total value that was sort of in  
13 those events can be quantified, but your  
14 question, which said the total value transferred  
15 to Barclays, I don't think there was total value  
16 transferred to Barclays.

17 Q. My question now is -- I'm away from  
18 the real estate, okay. Put the real estate  
19 aside for a moment. In terms of securities  
20 transferred, filling the hole, as it were, that  
21 you talked about, do you have knowledge of the  
22 number, the value of the securities?

23 A. I don't have --

24 MR. BERNICK: Go back and look at your  
25 question, Bob. It mixes the idea of filling

1 HIGHLY CONFIDENTIAL - M. KLEIN  
2 the hole, which he's already answered, with  
3 value transferred, which may -- or,  
4 securities transferred, which may go way  
5 beyond filling the hole. So, which one are  
6 you asking about?

7 MR. GAFFEY: I'm asking about the  
8 value of the securities, including that  
9 which was added into the hole, the value of  
10 the securities.

11 MR. BERNICK: So you want total value,  
12 the total value of the securities that  
13 Barclays got in this transaction?

14 MR. GAFFEY: Yes.

15 MR. BERNICK: If you can answer that.  
16 You're not being asked to answer that  
17 question as an expert, Mr. Klein. This is  
18 just purely a question about what you  
19 factually know in this deposition.

20 A. I'm always very sensitive when you use  
21 the term "value" because "value" has a --  
22 there's a definition that assumes that it has --  
23 that is the worth, that is the approximation. I  
24 don't have a view of what the approximation of  
25 the, quote, value of that was.

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2 I have the views that was expressed at  
3 that moment as to what the values were of the  
4 various different components of the transaction,  
5 and I have expressed those I think in prior  
6 parts of this, but I don't -- I don't have a,  
7 quote, valuation of the assets that were -- I've  
8 given you the componentry of what was disclosed  
9 as numbers, but I don't -- neither have I done a  
10 valuation nor do I have a valuation on them.

11 I don't know if I'm answering your  
12 question.

13 Q. Yeah, I see the issue with value,  
14 valuation and it being somewhat judgmental. Let  
15 me ask you this: Did you have a view, did you  
16 have a view on the Friday once the bag -- you  
17 know, once the additional assets had been added,  
18 the 15c3 and the other assets, what the -- did  
19 you have a view of what the value was?

20 A. I have to be as clear as I can. I had  
21 never heard the term "bag of hammers." I never  
22 saw a list of securities. So I had no knowledge  
23 nor could I have, frankly, a whole lot of  
24 confidence into exactly what that would have  
25 resulted.

| Page 150                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | Page 151                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1           HIGHLY CONFIDENTIAL - M. KLEIN</p> <p>2 I can say that we've had documents produced to</p> <p>3 us off of servers in the UK, servers in New</p> <p>4 York, and then further complicated by vendors in</p> <p>5 New York, so I can never be sure if I'm looking</p> <p>6 at London or New York time on some of these</p> <p>7 things.</p> <p>8       A. It doesn't seem --</p> <p>9       MR. BERNICK: I think --</p> <p>10      A. Monday morning was -- Monday morning</p> <p>11 is the 22nd, is the date of closing, correct?</p> <p>12 So this would refer to that Sunday evening into</p> <p>13 the Monday morning.</p> <p>14      Q. I suspect --</p> <p>15      MR. BERNICK: Well, no, no. This is</p> <p>16 probably 10 o'clock --</p> <p>17      MR. GAFFEY: I think it's 10 o'clock</p> <p>18 London time.</p> <p>19      MR. BERNICK: -- London time.</p> <p>20      MR. GAFFEY: So you're 4 A.M. New</p> <p>21 York -- or, 5 A.M. New York.</p> <p>22      MR. BERNICK: 5 A.M. New York time,</p> <p>23 real early in New York.</p> <p>24      A. 10 A.M., that's right. That's 5 A.M.</p> <p>25 would be consistent. That's correct. Then</p> | <p>1           HIGHLY CONFIDENTIAL - M. KLEIN</p> <p>2 that's why it says 6 and 6:30.</p> <p>3      Q. And then the subsequent one is 5:22</p> <p>4 A.M. of your --</p> <p>5      A. I get it. I understand.</p> <p>6      Q. You mentioned before the choices that</p> <p>7 were given to JPM. Does this e-mail relate to</p> <p>8 that issue?</p> <p>9      A. Yes, it does.</p> <p>10     Q. And Mr. Ricci --</p> <p>11       MR. BERNICK: Actually, you say</p> <p>12 choices given to JPM. It says "we have a</p> <p>13 few choices."</p> <p>14     MR. GAFFEY: I'm about to follow up on</p> <p>15 that.</p> <p>16     Q. I just want to know if it relates to</p> <p>17 the topic that we were referring to, the choices</p> <p>18 that were given to JPM.</p> <p>19     A. The subject matter that's in this</p> <p>20 e-mail relates to the JPM problem and the list</p> <p>21 of securities that they gave us in the middle of</p> <p>22 the night and the path to a resolution which was</p> <p>23 then resolved in that phone call that we had</p> <p>24 with their people and their lawyer on the phone.</p> <p>25 That's what it relates to, to the best of my</p>                                                                                                                                                                    |
| Page 152                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | Page 153                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <p>1           HIGHLY CONFIDENTIAL - M. KLEIN</p> <p>2 knowledge.</p> <p>3       To be clear, though, so you don't get</p> <p>4 mistaken, those three choices were not the same</p> <p>5 three choices that I indicated that were given.</p> <p>6      Q. No, I didn't understand your testimony</p> <p>7 that way. That may be my fault in the question.</p> <p>8 I was just sort of pointing to the topic as</p> <p>9 opposed to the particulars.</p> <p>10     A. I understand.</p> <p>11     Q. I'm showing you, Mr. Klein, what was</p> <p>12 previously marked as Deposition Exhibit 149A.</p> <p>13 Would you take a look through that, please.</p> <p>14     A. Yes.</p> <p>15     Q. Let me know when you've had a chance</p> <p>16 to review it.</p> <p>17     A. Yes.</p> <p>18     Q. Now, in the first e-mail sent here,</p> <p>19 it's from you to Mr. Diamond and begins, "The</p> <p>20 court has approved Barclays' acquisition of</p> <p>21 Lehman Brothers. Congratulations. A great leap</p> <p>22 forward for BarCap."</p> <p>23       Do you see that?</p> <p>24     A. Yes.</p> <p>25     Q. Do you recall sending this particular</p>            | <p>1           HIGHLY CONFIDENTIAL - M. KLEIN</p> <p>2 e-mail to Mr. Diamond?</p> <p>3      A. Not this specific, not this specific</p> <p>4 e-mail.</p> <p>5      Q. Further up in the e-mail, Mr. Diamond</p> <p>6 responds to you, "Yes," exclamation point,</p> <p>7 exclamation point, exclamation point, and then</p> <p>8 you reply, "Bob, great day. We clawed back 3</p> <p>9 billion more of value in the transaction and cut</p> <p>10 the building prices by 160 million tonight."</p> <p>11       What are you referring to there?</p> <p>12     A. This was the Friday morning pain and</p> <p>13 suffering to get the transaction closed. Bob at</p> <p>14 this stage was not intimately involved in the</p> <p>15 day-to-day, or I certainly wasn't communicating</p> <p>16 with him, so I didn't see him in part and</p> <p>17 parcel. It was Rich who was the day-to-day</p> <p>18 contact, which was a shift from the sort of Fed</p> <p>19 weekend, and Rich was sort of intimately</p> <p>20 involved in the moving pieces. And the</p> <p>21 summation up top was meant to sum up all the</p> <p>22 events that had taken place that got us to get a</p> <p>23 closing. It was a hard -- it was a hard day.</p> <p>24     Q. Now, the reference to 160 million, is</p> <p>25 that a reference to the commission issue you</p> |

1 HIGHLY CONFIDENTIAL - M. KLEIN  
2 spoke about before?

3 A. It was the splitting the difference on  
4 the -- I believe, but I don't know this for  
5 certainty, that there were two opinions,  
6 valuation opinions, both put forward by Lehman.  
7 It may well have been that the appraisers had to  
8 be agreed to by Barclays. I don't know the  
9 specifics, but the two opinions were then split  
10 down the middle.

11 Those opinions resulted in a reduction  
12 in value of the two buildings of 160 million.  
13 In addition, I think there was a waiving of this  
14 brokerage commission, but I think this -- I  
15 believe that this 160 refers to the splitting of  
16 the difference. The above was meant to be of  
17 kind of a summation of -- well, just of the  
18 challenges of the day to get over the finish  
19 line.

20 Q. And the 3 billion that's referred to  
21 in that e-mail to is a reference to the  
22 additional assets searched for and found on  
23 Friday?

24 A. I would have to -- again, I don't  
25 recall the specific e-mail, but that which we

1 HIGHLY CONFIDENTIAL - M. KLEIN  
2 found, the bag of hammers, 1.9, the 15c3, is  
3 entirely consistent with that.

4 Q. Does this refresh your recollection as  
5 to the amount that was added on?

6 A. I want to be clear. I don't believe  
7 anything was, quote, added on. I have said --

8 Q. Let me put a clearer question. You  
9 made that point before, and that's fair. Let me  
10 withdraw the question and rephrase it.

11 Does this refresh your recollection as  
12 to the additional value that was put in the deal  
13 on Friday?

14 MR. BERNICK: Go ahead.

15 A. You've used the term "value" a few  
16 times. I don't know what the value of, in  
17 particular, the bag of hammers, I don't know  
18 what the value of that was, but what I've said,  
19 there was the gap. We delivered the need to get  
20 more assets. This was a summation of what took  
21 place on the Friday.

22 Q. In your e-mail to Mr. Diamond you used  
23 the word "value" and you used it -- you say "3  
24 billion more of value." Was that your view of  
25 what the value was?

1 HIGHLY CONFIDENTIAL - M. KLEIN

2 A. I couldn't have a view specifically of  
3 the value because I don't have the -- I didn't  
4 have the analytics of the value and I never saw  
5 the 1.9. It was a reference made to us in terms  
6 of what the value was. The reference is when  
7 someone says you're getting 1.9 billion of  
8 securities, that it's 1.9 billion of securities.  
9 That's just not something that today or then I  
10 could independently verify.

11 (Discussion off the record.)

12 (Recess; Time Noted: 3:07 P.M.)

13 (Time Noted: 3:17 P.M.)

14 EXAMINATION BY

15 MR. TECCE:

16 Q. Good afternoon, Mr. Klein. My name is  
17 James Tecce. I am an attorney at Quinn Emanuel  
18 and we are counsel to the Creditors Committee.

19 Going to September 19, the day of the  
20 sale hearing, I believe when Mr. Gaffey was  
21 asking you questions earlier, you referred to a  
22 sidebar that took place during the sale hearing  
23 that you did not participate in, correct?

24 A. There was a reference -- are you  
25 referring to the e-mail discussion?

1 HIGHLY CONFIDENTIAL - M. KLEIN

2 Q. No, no, no, I'm referring to the sale  
3 hearing -- let me back up for a second. Did you  
4 participate in the sale hearing where the  
5 transaction was presented to the bankruptcy  
6 court for approval on the 19th of September?

7 A. I sat in and watched, yes.

8 Q. Okay. And did there come a point in  
9 time during the sale hearing where there was a  
10 sidebar discussion among Weil attorneys and  
11 creditor attorneys, as you understood?

12 A. I believe so.

13 Q. Okay.

14 A. I believe there was a sidebar amongst  
15 the Weil attorneys, other attorneys, and  
16 interested parties broadly as a -- I don't  
17 believe that it was restricted to attorneys. It  
18 was interested parties fully being briefed, as I  
19 understood it to be the case, but I don't know  
20 all the people that were in the room. But it  
21 was a fairly broad briefing on what had been the  
22 transaction.

23 Again, I don't know, just to respond  
24 to your comment about lawyers and lawyers, I  
25 think it was far broader than that.

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Q. Okay. And to be clear, you did not participate in that discussion, correct?

A. I don't believe I did.

Q. Okay. Did there come a point in time during the sale hearing that you participated in any discussions with the advisors to the Creditors Committee, their attorneys, their financial advisors?

A. Not during the sale hearing that I'm aware of.

Q. Okay.

A. Or that I can recall.

Q. Was there a point in time prior to the sale hearing that you participated in discussions with the committee? And just to be clear, when I say "the committee," I mean the committee or their advisors or their attorneys.

MR. BERNICK: I don't know that you have established what the witness really knows about his knowledge of who is on the committee or who their lawyers are such that he could answer your question. I mean, if he knows who's on the committee, who the lawyers are, then he can answer the

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question.

MR. TECCE: I'm not asking who's on the committee. I'm asking if he ever had a conversation with their advisors.

MR. BERNICK: But if he doesn't know who their advisors are or he doesn't know whose on the committee, he can't answer the question. I'm not saying -- he may well know.

MR. STERN: James, in other words, he may have spoken to someone at Houlihan, but he may not have known that the person was from Houlihan.

MR. BERNICK: Or that Houlihan was professionals for somebody.

Q. Do you have an understanding of who the attorneys for the Creditors Committee were?

A. I met you today. I don't -- I don't know who was representing -- I don't know that there was only one creditor committee or if there was more. I don't know all the background on the Creditors Committee and who was involved.

Q. Okay. Did you have an understanding that Houlihan Lokey was the financial advisor to

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the Creditors Committee?

A. I have subsequently learned that official capacity. I don't know that I knew specifically that they had that role at the time, but I have subsequently learned that.

Q. Okay. And did you know that Milbank Tweed was counsel to the Creditors Committee?

A. I don't have a recollection of specifically of Milbank Tweed. I don't.

Q. So, prior to the sale hearing taking place, did you engage in any conversations or discussions with Houlihan Lokey or Milbank Tweed concerning the sale transaction?

A. I can -- to be very precise, there was a series of events at the Weil Gotshal firm where there were a series of meetings in meeting rooms. I don't recall the specific dates of those meetings or meeting rooms, but there was one evening in which there was a creditors committee of some form meeting. I don't specifically know what was transpiring.

I did get pulled into a side room by a group of people that included some of the Weil lawyers, and again, I don't recall specifically

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which date in the chronology it was, but it was described to me that could I explain some elements of the transaction, and the creditors were involved. There was a guy with glasses. I don't -- I don't know what his specific name was.

And I remember specifically that meeting only because I drew on a manila folder such as that with a green marker the components of both this 45 and the assets that were then collateralized against it, separately and distinctly, the other, quote, moving pieces in what I understood to be the fund flows.

It was not a very long conversation and I can't tell you who other than I think Harvey Miller was in because I got grabbed in there, but I specifically went through, again, only because I grabbed a manila thing and there was a green pen and I just have that particular recollection of drawing boxes.

And I did it because the Weil firm asked me to, and as I understood it, there was some form of ongoing creditor committee meeting that I wasn't a party to. That's my only



1 HIGHLY CONFIDENTIAL - M. KLEIN  
2 recollection.

3 Q. Okay. And did this take place before  
4 or after the sale hearing?

5 A. I don't have a recollection of what --  
6 I just don't have a recollection of the -- it  
7 was at Weil, but I don't know -- I don't have a  
8 recollection.

9 Q. Is there any reason --

10 A. And by the way, I know which  
11 conference room it was at Weil because we had  
12 moved from the corner conference room to the one  
13 next to it because I was grabbed, and there was  
14 the middle conference room near the entryway was  
15 where the Creditors Committee was meeting. So I  
16 sort of know -- I have a picture of the  
17 whereabouts, I just don't remember the day.

18 Q. Do you have any reason to believe that  
19 it took place prior to the sale hearing Friday  
20 hearing?

21 A. Again, I don't have a recollection of  
22 which -- I don't have a recollection of which  
23 day it happened. I know specifically what I  
24 drew and that I was asked to have this  
25 discussion and that it related to the Creditors

1 HIGHLY CONFIDENTIAL - M. KLEIN

2 Committee and the fact that they were meeting.  
3 Beyond those facts, as to which date and who the  
4 people were, because I don't -- I don't think  
5 they introduced themselves to me, I'm fairly  
6 certain they didn't introduce themselves to me,  
7 I don't have more of a recollection than that.

8 Q. Okay. And so let's just back up for a  
9 second. I believe that you referenced a larger  
10 meeting and then you were pulled into a side  
11 room; is that correct?

12 A. That's right.

13 Q. And so let's start with the larger  
14 meeting. Did you -- what was your understanding  
15 of what the larger meeting -- of who was in  
16 attendance at the larger meeting?

17 A. Something to do with the creditors. I  
18 don't have more detail on it than that because I  
19 didn't know the people. There was just a big  
20 room that supposedly there was the creditors  
21 meeting and a phone call. I was asked to be  
22 pulled into this other side room --

23 Q. Okay.

24 A. -- and I acquiesced.

25 Q. Okay. The larger meeting, did you

1 HIGHLY CONFIDENTIAL - M. KLEIN  
2 speak with anyone or --

3 A. I wasn't in that larger meeting.

4 Q. I believe you mentioned Mr. Miller in  
5 the side meeting. Do you remember anyone else  
6 who attended that meeting, the names of anyone  
7 else?

8 A. It was -- there were people floating  
9 around, you know, from Barclays and from Cleary  
10 Gottlieb and people floating around from the  
11 Weil firm as well. I just don't know -- people  
12 were coming in and out of some of those rooms,  
13 so I just don't know. I just remember Harvey  
14 asked me to explain it, so that's the only  
15 reason why I know Harvey was there.

16 Q. Do you know why he asked you to  
17 explain it? Do you have an understanding of why  
18 he asked you to explain it?

19 A. No, he just asked me to -- no, I  
20 don't. He just asked me to.

21 Q. Do you remember the sum and  
22 substance -- well, actually, how long did this  
23 sidebar, side room meeting last, do you  
24 remember?

25 A. I don't. I don't. I don't think it

1 HIGHLY CONFIDENTIAL - M. KLEIN

2 was exceptionally long, but it was long enough  
3 for me to draw just a box diagram of the flow of  
4 funds on a manila folder and answer one or two  
5 questions. I don't want to speculate how long  
6 it was. I don't think it was an enormously long  
7 meeting.

8 Q. Do you remember the substance of what  
9 was discussed with respect to, you know, the  
10 folder?

11 A. It was the principal elements were the  
12 45 loan, the assets that were roughly viewed as  
13 equivalent to that, the, if you will, bag of  
14 hammers and -- I'm sorry, let me be more  
15 precise.

16 I recall specifically the funds flows  
17 being discussed and the critical element of that  
18 discussion being the 45. Beyond that, I don't  
19 know specifically which boxes or otherwise I  
20 drew, so I don't want to -- I don't want to go  
21 through over-detail because I would be then  
22 speculating on the remaining details.

23 Q. Do you recall whether the liabilities  
24 that were being assumed by Barclays was  
25 discussed during the meeting?

| Page 210                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | Page 211                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1           HIGHLY CONFIDENTIAL - M. KLEIN</p> <p>2   and I indicated that I don't have the authority</p> <p>3   to do anything like that, and then I think</p> <p>4   Archie Cox was the individual that was there</p> <p>5   because he was the presiding, if you will,</p> <p>6   officer.</p> <p>7           It could well have been that the</p> <p>8   agreement was other people, because there were</p> <p>9   other senior people like Jonathan Hughes around.</p> <p>10   But as I understood it, that was agreed to, that</p> <p>11   above and beyond that, some minimum number, it</p> <p>12   could in fact go back to the estate. That was</p> <p>13   very late in the process. I don't remember</p> <p>14   specifically when, but it was very late in the</p> <p>15   process.</p> <p>16   Q.   And do you have a recollection, Mr.</p> <p>17   Klein, of where you were when this discussion</p> <p>18   with Mr. Cox and Mr. Miller took place?</p> <p>19   A.   You know, I want to say again, you</p> <p>20   have now done this twice to me. I have not said</p> <p>21   that there was a conversation between Mr. Cox</p> <p>22   and Mr. Miller.</p> <p>23   Q.   I'm sorry. I did not mean to</p> <p>24   represent your prior testimony. I think I must</p> <p>25   have misunderstood your answer.</p>                                                                              | <p>1           HIGHLY CONFIDENTIAL - M. KLEIN</p> <p>2   A.   I believe, but I don't know for sure,</p> <p>3   that the request from Mr. Miller came somewhere</p> <p>4   at the Weil offices, but I don't -- I don't have</p> <p>5   a specific recollection, and I just want to be</p> <p>6   clear that was a request to me that I then</p> <p>7   passed on to the people at Barclays because it</p> <p>8   was their decision.</p> <p>9   Q.   And you say late in the process, so</p> <p>10   can we at least narrow it down to a date? Was</p> <p>11   that request of Mr. Miller to you, was that on</p> <p>12   the Sunday, the 21st?</p> <p>13   A.   My apologies. I don't know the date.</p> <p>14   I don't -- I don't know the date.</p> <p>15   Q.   Was it sometime prior to the closing</p> <p>16   of the deal on Monday morning?</p> <p>17   A.   Oh, it certainly was prior to the</p> <p>18   closing. I don't -- I'm not aware of -- it</p> <p>19   certainly was prior to the closing.</p> <p>20   Q.   And just to bookend it, can we agree</p> <p>21   that that conversation took place sometime</p> <p>22   between the bankruptcy court hearing on the 19th</p> <p>23   and the closing on the 22nd, is that fair?</p> <p>24   A.   I don't, I don't, I really don't. As</p> <p>25   I think I've said, the -- I don't think the 15c3</p>                                                         |
| Page 212                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | Page 213                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <p>1           HIGHLY CONFIDENTIAL - M. KLEIN</p> <p>2   assets came into play until sometime when this</p> <p>3   issue of the broader set of asset problems after</p> <p>4   Tuesday occurred, so it's clearly after that,</p> <p>5   and it's clearly before closing, but I just -- I</p> <p>6   just don't know the specific date. And I would</p> <p>7   help you if I could remember, but I don't.</p> <p>8   Q.   I understand, sir. Forgive me if I'm</p> <p>9   getting a little repetitive, can you be as</p> <p>10   precise as possible about the terms of the</p> <p>11   request from Mr. Miller to you?</p> <p>12   A.   I've given you what I know. I</p> <p>13   don't -- I don't have a recollection above and</p> <p>14   beyond that.</p> <p>15   Q.   And just so I understand your</p> <p>16   testimony, sir, Mr. Miller asked you whether</p> <p>17   Barclays would agree that if there was more than</p> <p>18   a certain figure, perhaps around \$750 million,</p> <p>19   available under c3, then that would be returned</p> <p>20   to the LBI estate; is that accurate?</p> <p>21   A.   You are using very precise terms and I</p> <p>22   want to be very careful because (A) this was a</p> <p>23   year ago or more -- a year ago, and there was a</p> <p>24   lot of moving pieces. I don't specifically know</p> <p>25   who was involved in the conversation other than</p> | <p>1           HIGHLY CONFIDENTIAL - M. KLEIN</p> <p>2   Harvey Miller.</p> <p>3           I only know that it was a request</p> <p>4   that, above and beyond what had been represented</p> <p>5   as being assets that were certainly going to go,</p> <p>6   which was this e-mail, if there were more, could</p> <p>7   those come back to the estate, and I said it's</p> <p>8   not -- that's not something that can be done.</p> <p>9           Now, I don't know -- not something I</p> <p>10   can do. I don't know who else was in the room.</p> <p>11   It would be -- there was virtually no situation</p> <p>12   that I can recall, in fact, I can't recall any</p> <p>13   situation that I was in a room alone with Harvey</p> <p>14   Miller. So it would have been as part of some</p> <p>15   other grouping. And then a response was given,</p> <p>16   to my understanding, from Barclays back that</p> <p>17   that would be okay. But I don't -- I don't have</p> <p>18   a recollection beyond what I've just told you.</p> <p>19   Q.   Did you have an understanding, Mr.</p> <p>20   Klein, that the transfer of these moneys from</p> <p>21   Lehman to Barclays, the 15c3 assets, was</p> <p>22   conditional upon there being an excess beyond</p> <p>23   the regulatory requirement?</p> <p>24   MR. BERNICK: Object to the form. I'm</p> <p>25   not objecting. I think the form of your</p> |

1 HIGHLY CONFIDENTIAL - M. KLEIN  
2 question, though, is ambiguous.

3 The witness has now been over this  
4 like four or five different times, and I'm  
5 becoming a little concerned that there's  
6 something that's turning on a nuance here  
7 that's just not known by the witness.

8 A. I've testified to what I know.  
9 Someone handed an e-mail that said this would be  
10 available to you. It was an important part of  
11 the decision process in that last Friday. It's  
12 not a subject I knew a lot about before and it's  
13 not a subject I know a lot about now.

14 Q. And the e-mail was, to your  
15 understanding, an e-mail from some individual at  
16 the S.E.C.; is that correct?

17 A. There was an e-mail that referenced  
18 that there was an approval to release a certain  
19 amount of these funds, and as part of that, the  
20 Lehman team said this is an asset for you to  
21 solve what was the discussion that Mr. Gaffey  
22 and I had about the asset issue, and the  
23 reference made, as I've said that I can recall,  
24 all I can recall is that it was up to 2 billion,  
25 but that this note said it was at least 750 that

1 HIGHLY CONFIDENTIAL - M. KLEIN  
2 could be released.

3 I don't recall any more, but I'm  
4 assuming that that e-mail -- that was an e-mail,  
5 so you all have a lot of documents.

6 Q. We have many e-mails, Mr. Klein, you  
7 are right.

8 Do you know, Mr. Klein, whether the  
9 e-mail about which you have testified -- I  
10 understand that this was a year ago and your  
11 recollection on this issue is one year old and  
12 perhaps not any longer precise, do you recall  
13 whether that was an e-mail from someone at the  
14 S.E.C. or was it an e-mail that simply  
15 referenced the S.E.C.'s supposed approval of  
16 this element of the deal, or do you not know  
17 either way?

18 MR. BERNICK: You may want to ask him  
19 if he ever saw it. I don't know, but no one  
20 has established whether he saw it.

21 MR. OXFORD: I think he testified that  
22 he hadn't seen it subsequently, from which I  
23 inferred that he had seen it earlier.

24 A. There was -- the only reason I recall  
25 the e-mail was it was rare that there was

1 HIGHLY CONFIDENTIAL - M. KLEIN  
2 specific things shown to me that said here's an  
3 asset, and because of that event on Friday,  
4 there was this new subject that came up --  
5 whether it was Thursday or Friday, I don't know  
6 when, but this new subject of this 15c3.

7 I didn't know what it was, it was  
8 referred to as an available set of assets, and  
9 that was then promptly handed to the lawyers  
10 because it was not a subject matter that I  
11 could, and then some determination had to be  
12 made was, is that relevant to then consider it  
13 as part of this asset pool, and the decision was  
14 yes. Who the e-mail was from and between I  
15 don't -- I don't have a recollection.

16 Q. I think last question on this, and I  
17 hope last question overall: You described  
18 earlier a give-back on the 15c3. Do you have an  
19 understanding of the reasons, if any, for the  
20 give-back on 15c3, sir?

21 A. I don't. I just recall a request  
22 coming in. I don't know why.

23 MR. OXFORD: Okay. Mr. Klein, thank  
24 you for your time. I don't have any further  
25 questions for you at this time.

1 HIGHLY CONFIDENTIAL - M. KLEIN

2 MR. GAFFEY: Just before we close the  
3 record, I don't know, Mr. Klein --  
4 We can go off the record.

5 (Discussion off the record.)

6 MR. BERNICK: At the outset of the  
7 deposition, there was a dialogue between Mr.  
8 Gaffey and I regarding production pursuant  
9 to the Subpoena that's been served on Mr.  
10 Klein through me of what I will call for  
11 short form the engagement letter between Mr.  
12 Klein and Barclays relating to this matter,  
13 and I undertook at that time to see if we  
14 could even get a hold of it during the  
15 course of the day, didn't have time to do so  
16 because we've been working so hard and  
17 intensely with these concise and insightful  
18 questions that I didn't get a time to break.

19 So I will in fact get a copy of that.  
20 I will in fact make it available in this  
21 case pursuant to the subpoena. However, my  
22 current intent on behalf of Mr. Klein is to  
23 redact the reference to a dollar amount, and  
24 we can have further discussion about that,  
25 but I will in fact discharge Mr. Klein's

1 J. KOBAK

2 UNITED STATES BANKRUPTCY COURT

3 SOUTHERN DISTRICT OF NEW YORK

4 -----X

5 In Re:

6 Chapter 11

7 LEHMAN BROTHERS

Case No. 08-13555(JMP)

8 HOLDINGS, INC., et al., (Jointly Administered)

9 Debtors.

10 -----X

11 \* \* \* PARTIALLY HIGHLY CONFIDENTIAL \* \* \*

12 (Pages 144-145 have been marked Highly Confidential.)

13 VIDEOTAPED DEPOSITION OF JAMES B. KOBAK, JR.

14 New York, New York

15 December 7, 2009

16 Reported by:

17 KATHY S. KLEPFER, RMR, RPR, CRR, CLR

18 JOB NO. 26430



J. KOBAK

the end of that hearing, yes.

Q. And that sale that was approved was a sale that was negotiated by people other than the trustee and his advisors, correct?

A. That's correct. Because I believe it was a condition of the deal that we at least agree that it was applied to our proceeding.

Q. And then the contractual documentation was finalized over the weekend and executed by the trustee's representative on Monday morning, correct?

A. A clarification letter, what was called a clarification letter was negotiated and drafted over the weekend and signed by us. Whether it documented the deal that was described to the Court I think is a different matter.

Q. My only question is, I think your affidavit and brief says you were not involved in the negotiations, obviously, of the APA because you weren't appointed yet, correct?

A. That's correct.

Q. And you were not -- I think you say you were not actively involved in the

J. KOBAK

negotiations of the clarification letter, correct?

A. That's correct.

Q. So the trustee's role was to approve the deal as trustee for the LBI SIPC liquidation, correct?

A. Yes.

Q. But the trustee was approving a deal negotiated by the Lehman executives, correct?

A. That's correct.

Q. And the trustee was approving a deal that had been negotiated by Lehman with the advice of its lawyers at Weil Gotshal, correct?

A. That's correct.

Q. The trustee was approving a deal that the trustee did not himself negotiate?

A. That's correct.

Q. And at the time of his approval -- let me refer you back to your affidavit, if I may, paragraph 4. In paragraph 3 you recount your approval by the judge, Judge Lynch, and then you say following that you went to the Bankruptcy Court for the sale hearing. And you say in the second sentence of paragraph 4, "We were

J. KOBAK

assisted by professionals at my firm and had engaged Deloitte & Touche to act as accountants." Do you see that?

A. Yes.

Q. When was Deloitte & Touche engaged?

A. We talked to them again. I don't know when the engagement letter was signed. It might have been after the liquidation actually began because, again, that I think was approved by SIPC as well as ourselves, but we talked to them shortly before Friday, I don't know if it would have been Wednesday or Thursday. And again, they had a few people involved. Clearly they didn't have time to get a full team together and they really didn't have -- wouldn't have had access to any information anyway.

Q. Can you tell me why Deloitte & Touche was engaged?

A. Well, we knew we would need an accounting firm to assist us. This is a major liquidation. There are a lot of books and records. There's 200,000 computer systems, or something like that. Substantial work needed to be done to reconcile accounts and so forth, so

J. KOBAK

we would clearly need the assistance of a major accounting firm.

It was a very large project, and Deloitte has a lot of experience in this area and didn't seem to have a conflict. So that's why Deloitte was chosen.

Q. Any other reason?

A. No, they had a good reputation for being experienced in this area.

Q. At the time that Deloitte & Touche was retained, and through the time of the sale closing, were you planning to sue Barclays?

A. No.

Q. Did Deloitte & Touche provide any advice to you over that weekend before the closing about the economics of the sale?

A. I don't believe so. I really don't believe. I mostly think they were trying to figure out what they might need to do on Monday morning in terms of what offices to go to, what kind of staff they had to put together, what the size and scope of Lehman might be just as a practical matter.

There were a lot of unanswered

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1 J. KOBAK  
2 questions that everybody had just around the  
3 logistics of things.  
4 I don't think they made any  
5 substantial investigation over the weekend. I'm  
6 not sure how they could have made any  
7 substantial investigation because I don't think  
8 they really would have had much access to people  
9 or records. Indeed, even when we took over the  
10 following week, it was very difficult for us  
11 initially to get access to books and information  
12 and so forth.  
13 Q. After the closing, did you ask  
14 Deloitte to analyze and assess the economics of  
15 the sale?  
16 A. Well, the economics of the sale we  
17 thought had been described at the hearing, and I  
18 can go into that now or later, whatever you'd  
19 prefer. So I think we thought we had a handle  
20 on the basic economics.  
21 Our real concern was getting our hands  
22 around exactly what was left, how we were going  
23 to staff things, what kind of customer accounts  
24 might be left with us, what was needed to be  
25 done to move the accounts to Neuberger. What

1 J. KOBAK  
2 was needed to be done would be needed to be done  
3 to move the accounts to Barclays.  
4 Q. Putting aside what you're saying about  
5 the sale hearing, specifically, did you ask  
6 Deloitte & Touche to do any work after the  
7 closing to analyze the economics of the sale?  
8 A. Certainly not immediately after the  
9 sale. I'm not sure what you mean by "analyze  
10 the economics of the sale."  
11 Q. Well, let me be more precise then.  
12 Did you ever ask Deloitte & Touche, was it part  
13 of their responsibility to create a closing  
14 balance sheet or an opening balance sheet,  
15 whichever you want to call it, for LBI before  
16 and after the sale to show on --  
17 A. They had been working on that for some  
18 period of time.  
19 Q. They're still working on that?  
20 A. I believe so, yes.  
21 Q. When did they start working on that?  
22 A. I don't recall.  
23 Q. Didn't they start working on that  
24 right after the sale closed?  
25 A. I'm not sure it was right after. It

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1 J. KOBAK  
2 might have been a few weeks after.  
3 Q. But in order to prepare a balance  
4 sheet, an opening balance sheet -- so let me  
5 make sure the record is clear and my  
6 understanding is clear.  
7 One of Deloitte & Touche's tasks is to  
8 create a balance sheet for LBI as of the start  
9 of the SIPC liquidation; is that correct?  
10 A. We asked them to do that at some  
11 point.  
12 Q. And they have not yet completed that,  
13 correct?  
14 A. That's correct.  
15 Q. And they began work on that shortly  
16 after the SIPC liquidation began?  
17 A. I'm not sure it was shortly after. It  
18 might have been several weeks after.  
19 Q. Well, wouldn't it be one of their  
20 immediate tasks that you would ask the  
21 accounting firm to do?  
22 A. I don't see why it would be. You  
23 could well do a liquidation without ever having  
24 a starting balance sheet, perhaps, and certainly  
25 the immediate task would be to get control of

1 J. KOBAK  
2 the books and records, figure out what we needed  
3 to do, figure out what we needed to do to get  
4 customer accounts transferred and reconcile  
5 those figures, which involved a lot of  
6 coordination with people at Barclays and the  
7 staff remaining at LBI, and there were a myriad  
8 of other details to attend to. We were getting  
9 calls from prime brokers, you know, minute by  
10 minute, basically, with all kinds of questions  
11 of where property was and where an account was.  
12 So I don't, although it would be nice  
13 to have a balance sheet, we asked them  
14 eventually to prepare one, I do not think it was  
15 an initial priority item by any means.  
16 Q. We have asked Deloitte & Touche to  
17 produce documents to us and they have refused.  
18 Can you explain to me why the trustee won't  
19 allow Deloitte & Touche to produce documents to  
20 us to show their understanding of the economics  
21 of the sale?  
22 MR. MAGUIRE: The trustee has imposed  
23 a -- asserted a privilege over the work that  
24 Deloitte did.  
25 MR. HUME: I'm asking --

J. KOBAK

MR. MAGUIRE: That's not proper. That's addressed to the trustee's counsel. We have a whole series of correspondence with your partner about that. That's not appropriate for this deposition.

(Exhibit 440, Debtors' Motion to (A) Schedule a Sale Hearing; (B) Establish Sales Procedures; (C) Approve a Break-Up Fee; and (D) Approve the Sale of the Purchased Assets and the Assumption and Assignment of Contracts Relating to the Purchased Assets, marked for identification, as of this date.)

Q. Mr. Kobak, Exhibit 440 is the Debtors' Motion to Schedule a Sale Hearing that I believe was filed early in the morning on September 17 and that attaches to it a copy of the Asset Purchase Agreement with handwritten edits on it.

Do you see that?

A. Yes, I do.

Q. And are you familiar with this document, the version of the APA with the handwritten edits?

A. I believe, and I think my declaration says that we had seen a copy. I don't know if

J. KOBAK

17th at some point.

Q. And who at the trustee would have been responsible for reviewing this to understand the nature of the deal?

A. I think at that time it would have been primarily myself and the trustee.

Q. And at the time you reviewed this, did you understand the economics of the deal?

A. We understood primarily the economics of the deal, which originally I think was said to involve some \$70 billion of assets against some amount of liabilities, and I think that was the basis for our understanding of the overall economics. We had some understanding at that time of the items that were to be transferred to Barclays. Those -- what we were primarily interested in what would remain behind because that would be our job, to liquidate those things and take care of the customers.

Q. And who would you have gotten information from other than Weil Gotshal?

A. I think it was primarily Weil Gotshal. I don't know, they may have had one or two businesspeople who I guess at that time would be

J. KOBAK

we were -- had seen it before we got to court when we might have been handed a copy of it.

Q. This would have been -- this was filed with the court on Wednesday, September 17. Are you saying you're not sure whether the trustee looked at it until September 19?

A. No. No. No. I think we saw it on the 17th. I don't know that we saw it until we got to the courtroom.

Q. Oh.

A. The bankruptcy courtroom.

Q. You attended the hearing. Paragraph 5 of your affidavit says you attended the hearing on September 17, 2008, correct?

A. Yes, that's correct.

Q. And the first sentence of paragraph 5 of your affidavit said you had been able to review the proposed sale order and a hand-marked version of the Asset Purchase Agreement, correct?

A. Right.

Q. So you would have reviewed this on the 17th?

A. I think we were given a copy on the

J. KOBAK

Lehman businesspeople. I can't even remember who they might have been who might have answered some questions.

Q. Can you remember any specific Lehman executives that the trustee consulted with before the sale hearing on September 19?

A. No, I can -- I can speculate, but I cannot remember who was on the other end of the telephone.

Q. Do you remember that there were conversations with some Lehman executives, but you don't remember their names?

A. That's correct. And there weren't a lot of conversations, but there may have been a couple.

Q. Were there any conversations with Lehman executives after the Friday, September 19, sale hearing and before the closing?

A. Well, we did have people at the hearing -- at the weekend clarification letter drafting Sunday evening and Monday morning, and I know that there were Lehman executives, some of whom subsequently became Barclays executives, who were there.

J. KOBAK

I don't know to what extent -- I wasn't there myself. I was on a telephone for many hours, as was the trustee and as were people from SIPC. I don't know if there were substantial -- I don't believe there were substantial communications. There may have been some communications at which our people were present at which Lehman executives may have said something.

Q. Let's go back to this document, if we could. Let me refer you to page 6 of the Asset Purchase Agreement where the purchased assets are defined.

A. Yes.

Q. And you see towards the bottom of 6 where purchased assets are defined. It says, "'Purchased Assets' means all of the assets of seller used in connection with the business, excluding the excluded assets." Do you see that?

A. Yes, I do.

Q. And so at the time the trustee received this, did the trustee understand that Barclays was buying all of the assets used in

J. KOBAK

the business as defined in this agreement?

A. Except for that which was -- except for that which was excluded. That was the intention at that time.

Q. And it then lists numerous categories?

A. Yes.

Q. Subsection A through S, and then there's a handwritten T on page 8. Do you see that? I believe it's a total of 19 specific subcategories of purchased assets. Do you see that?

A. I see that it goes through T.

Q. Okay. And do you see that -- do you see that there are no valuations given for any of the assets listed in that definition of "purchased assets" except the assets referenced in subsection D?

A. Yes. In the handwritten delineation, there's a value given for those, a book value.

Q. A book value of 70 billion?

A. Approximately 70 billion, that's correct.

Q. For D. But that's -- there are numerous other subcategories of assets for which

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no valuation is given?

A. That's correct.

Q. And are you aware of whether there was ever a total valuation given for all of the purchased assets set forth in the Asset Purchase Agreement?

A. No, there might have been some definition of what amount of retained cash was subsequently -- except for \$250 million, there really wasn't any retained cash. I'm sorry, this is what Barclays -- I mean, there may have been some, and I don't remember what it was, some estimate of the cash.

I think there was some estimate that the residential real estate mortgages were worth -- "worth" probably isn't the right word, but had some kind of value of \$6 billion, so 50 percent of that would be \$3 billion, although I don't think anyone thought that they were actually worth anywhere near that, and I don't think any numbers were associated with any of the other items listed.

Q. So other than the retained cash, the residential mortgages, and the long positions in

J. KOBAK

subsection D, to your knowledge, there was never an appraisal or evaluation put on the other subcategories of purchased assets set forth in the APA; is that correct?

A. That's correct, except for the ones that I've stated, and you know, many of these, like furniture and equipment, purchased intellectual property would be unlikely to have substantial value given the values at stake here, but that's correct.

Q. And let's go back to the retained cash. What was your understanding as of the time of the original Asset Purchase Agreement, as of September 17, of the value of the retained cash? In other words, the cash that Barclays would acquire?

A. Yeah, I don't remember. I think there might have been some discussion of that. I just don't remember what it is.

Q. When you referenced the residential real estate mortgage securities, you recall that a value was represented to the Court of about \$6 billion. So 50 percent of that would be 3 billion, correct?



J. KOBAK

A. That's correct.

Q. And so the Asset Purchase Agreement would show that if you added the long positions with the residential real estate mortgage securities, you would have assets with an proximate value of 73 billion, plus whatever these other subcategories would add up to?

MR. MAGUIRE: Objection. Misstates the record. I think the witness made clear that he didn't think anybody thought that it was actually worth 3 billion.

Q. What does that mean for something to have a value ascribed to it but not really be worth that? What does that mean?

A. I don't know what it means because I don't know what people were basing it on.

Q. Are you saying there were valuations given that week that might not have represented what you could actually sell the assets for in the market, is that what you're saying?

A. Yes.

Q. So there were assets for which numerical valuations were estimated which were higher than the amount you could actually sell

J. KOBAK

those assets for in that market at that time?

A. That might well have been the case in that market at that time. It might well be the case today.

Q. Would you say there were assets included in this transaction, financial assets, that were extremely difficult to value that week because they were illiquid?

A. Yes, I mean, I have been told that about certain securities and other assets, yes.

Q. Were you aware of the fact that the financial markets were in a state of crisis during the week of September 15th, 2008?

A. The newspapers and T.V. and media referred to a financial crisis during that week. It was well-publicized.

Q. Do you think they were just using the word loosely, or do you think there really was a crisis?

A. I don't purport to speak for the press.

Q. Did the trustee understand we were in the middle of a financial crisis?

A. I think it was a severe -- obviously

J. KOBAK

this deal was related to a severe financial crisis. The reason that we were appointed was because there was a concern that customers be protected.

Q. And in that crisis, certain financial assets on the books of Lehman Brothers that were going to be transferred to Barclays were very difficult to sell, weren't they?

MR. CARDEN: Objection.

A. I don't know. I'm not in the business of selling assets.

Q. Well, you're in the business of telling me the residential real estate mortgages couldn't be -- had a value that wasn't a real value?

A. I'm telling you that people ascribed a value of \$6 billion and I was led to believe, and the trustee was led to believe, that there was no assurance that that value would necessarily be realized.

Q. And I'm asking you, isn't that true of other financial assets that were included in this transaction, that they were difficult to value that week?

J. KOBAK

MR. CARDEN: Objection to form.

MR. DAKIS: Objection to form.

MR. MAGUIRE: Asked and answered.

Q. Do you agree with that or do you deny that? It's very simple.

MR. MAGUIRE: Asked and answered.

MR. CARDEN: Same objection.

A. I agree that there was some securities and other positions that I have been told were illiquid and difficult to value in some cases. We've asked Deloitte or others to value them, and we've been told that they were illiquid and difficult to value.

MR. HUME: Let's take a short break because the next exhibit is not ready, I'm afraid.

THE VIDEOGRAPHER: The time is 9:14. We're going off the record.  
(Recess.)

THE VIDEOGRAPHER: The time is 9:22.

We are back on the record.

BY MR. HUME:

Q. Mr. Kobak, let's just look a little longer at this version of the APA with the

J. KOBAK

handwriting on it. If you go back to page 3, really if you start on page 2 where it talks about excluded assets, do you see that at the bottom of page 2?

A. Yes.

Q. It defines "excluded assets" and it includes in that, in subsection B, all cash, cash equivalents, bank deposits or similar cash items of LBI and its subsidiaries other than \$1.3 billion in cash. Do you see that?

A. Cash, cash equivalents, bank deposits, yes.

Q. Yes. So that suggests there's 1.3 billion of cash, cash equivalents, bank deposits or similar cash items that, under this version of the agreement, were going to Barclays, correct?

A. Yeah, and that actually refreshes my recollection as to what I and I think we understood the -- roughly the amount of cash and cash equivalents to be.

Q. Okay. So, at the time of this version of the APA, you had long positions estimated to be 70 billion, plus cash, cash equivalents, et

J. KOBAK

cetera, of roughly 1.3 billion, plus residential real estate mortgage securities for which a value of 3 billion was given, but the liquidation value might be debatable, correct?

A. Well, yes, but book value -- I mean, the 70 billion was said to be book value, not actual -- not actual value.

Q. What do you mean by that? What's the difference between book value and actual value?

A. Book value I think is what it's -- was booked for on the books. I don't know if that means it necessarily marked to market or not. I really don't know either way, but I'm not sure it means present market value.

Q. So at the time you were looking -- the trustee was looking at this agreement, these numbers, the number 70 billion, did the trustee believe that was a number that represented the value of the long positions or just some random number associated with the long positions?

MR. CARDEN: Objection to form.

A. I don't think it was a random number. I think it was exactly what it says in the document and we didn't have any more or less

J. KOBAK

information than that.

Q. Okay. Based on that information, book value of 70 billion for long positions plus 3 billion for resis plus the 1.3 billion for the cash and cash equivalents, based upon that information in this document, did the trustee inform anyone that this deal was not acceptable to the trustee?

A. No.

Q. If you flip forward to me -- with me to page 11 of this document, it talks about an assumption of liabilities in Section 2.3. Do you see that? It lists down at the bottom.

A. Yes.

Q. And it lists out the liabilities Barclays would be assuming, correct?

A. Yes.

Q. On the next page, page 12 in subsection I of this provision, 2.3 of the APA, the handwriting -- the handwritten edits list out a definition of short positions with an approximate book value of 69 billion, do you see that?

A. Yes, I do.

J. KOBAK

Q. And so under this version of the APA filed with the Court on September 17, Barclays was getting a set of assets, many of which were not valued, but some of which had a value, a book value, of approximately 73.3 billion -- sorry, 74.3 billion, and short positions of approximately 69 billion?

A. Valued at 69.

MR. CARDEN: Objection to form.

Q. Would you agree with that?

MR. CARDEN: Objection to form.

A. That's what the deal says, that's what was described, approximately.

Q. You have assets, many of which were not defined, and liabilities, many of which were not -- sorry. The agreement that was filed with the Court on the 17th had many assets for which values were not given, correct?

MR. CARDEN: Objection to form.

MR. MAGUIRE: Objection to form.

Asked and answered.

A. Yes.

Q. And it had several liabilities for which the contract did not give a value,

J. KOBAK

correct?

A. That's correct.

Q. But it did have a series of assets that totaled up to book value of approximately 74.3 billion, correct?

MR. CARDEN: Objection to form.

A. Yes.

Q. And it had one set of short positions in the liabilities that was given a value of, a book value of approximately 69 billion, correct?

A. That's correct.

Q. And the trustee never told anyone that that -- the economics of that transaction was unacceptable?

A. No, we did not. I think our understanding was that the -- there was a rough equivalence probably between the value of the assets and the value of the liabilities. And again, our concern was that with really the entity that was going to remain behind.

Q. When you say you had an understanding there was a rough equivalence, do you mean 69 billion and 74.3 billion represent a rough equivalence of book value?

J. KOBAK

MR. CARDEN: Objection to form.

A. Well, I think there's a rough equivalent of the long positions and the short positions. There are a few other assets. There are also other liabilities. As I've said, I don't think some of the assets probably had the value ascribed to them, and when you put that all together, it seems to me you have a deal where it's fairly -- the assets and the liabilities are fairly equivalent, at least within a fairly narrow range, I would say.

Q. What was the narrow range?

A. Well, you said 74.3 to 69 plus. I've told you I don't think the 74.3 probably was really worth quite 74.3, but you're talking about something where you probably have, if there were any profit ascribed to the deal, a very narrow profit, possibly at the end of the day there would be a net cost to Barclays. And I think that was our understanding of what was involved.

Q. Did the trustee ever communicate to anyone that they would not approve the deal if Barclays recorded a profit on the deal?

J. KOBAK

A. No.

Q. Did you -- did the trustee have any basis for knowing whether the 69 billion --

A. You're talking about the Asset Purchase Agreement as described here?

Q. Correct.

A. Yeah. Okay.

Q. But did the trustee at any time before the closing inform anyone that the trustee would not approved the deal if Barclays recorded a profit on the deal?

A. Our understanding was not that there would be a profit on the deal or, if there were a profit, that it would be any kind of substantial profit. Our understanding was that the assets and liabilities as described to the Court were pretty close together, that there were some additional liabilities, like employment and severance and cure costs, of several billion dollars that were being assumed by Barclays, and if you put those things together, it's unlikely that there would be any substantial profit to Barclays, certainly unlikely, in all probability, there might be a

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loss to Barclays.

And we were also concerned that it was described that we would have at least \$20 billion of assets left in the broker-dealer, and obviously that number was important to us since our job in life was to liquidate the broker-dealer and make sure the customers were protected.

Q. Mr. Kobak, that was not my question. Just to be clear, at any time before the closing did the trustee communicate to anyone that the trustee would not approve the deal if Barclays was likely to record a profit on the deal?

A. I don't believe that discussion ever came up.

Q. Now, going back to the Asset Purchase Agreement you reviewed on September 17, did the trustee have any greater knowledge about the 69 billion and whether that value was accurate than it did about the 70 billion or the 3 billion for resis? Was there the same doubt about whether that number represented an actual, real, definite market value of those positions?

MR. CARDEN: Objection to form.

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MR. DAKIS: Objection to form.

A. I think there had been discussions that there was a value of 6 billion in the resis, but they probably weren't worth that much. I don't know if there was -- I don't recall a specific discussion around the 70 billion or the 69 billion, just that those two numbers were roughly in harmony with one another.

Q. Who did you -- who do you recall having a discussion with about the 6 billion of resis?

A. I think we might have had a discussion at some point with Mr. Miller.

Q. And what did he tell you in that discussion?

A. And I don't remember if it was at this time or, as I recall, DTC wanted the resis because it was concerned about liabilities to it if the accounts continued to transfer and so forth. And I think at that time at some point we were told that some amount of the resis was going to go to them, that they had a book value of 3 billion, 6 billion, but that they really --

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nobody thought they were worth that much, but basically DTC wanted the most assurance it could have that it would be protected.

(Exhibit 441, a document bearing Bates Nos. HHR\_00006494 through 95, with attachment, marked for identification, as of this date.)

Q. Mr. Kobak, Exhibit 441 is an e-mail produced by Hughes Hubbard to us in this case that we believe has the attachment which was given in native format of the balance sheet that is stapled to it. The e-mail is from Richard Krasnow at Weil Gotshal to Jim Giddens as well as to someone at the S.E.C. and Mike Macchiaroli of the S.E.C., copying Brent Beldner at Lehman and Martin Kelly at Lehman, do you see that?

A. Yes, I do.

Q. And the e-mail is dated September 18 at 8:30 P.M., do you see that?

A. Yes, I do.

Q. The first line of the e-mail from Mr. Krasnow states, "Attached is the draft LBI balance sheet reflecting unaudited estimated numbers both pre and post Barclays

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J. KOBAK

acquisition -- Barclays transaction." You see that?

A. That's correct.

Q. Was this e-mail provided to the trustee to give him some sense of what the economics of the transaction were?

A. I don't know if it was the economics of the transaction so much as what our entity might look like, to the extent you could tell that from a balance sheet. I remember that we had been asking for this information for a while, not -- "a while" in this context meaning maybe a few hours, and we didn't get it until the evening.

I think I saw a copy of this and discussed it with the trustee. Indeed, I think we had a call with Weil about it, and I think it was in that call where a couple of Lehman people were on the phone to try to answer some questions. And again, I don't recall who those people were at this point.

Q. Do you remember if Brett Beldner or Martin Kelly were involved in those conversations?

J. KOBAK

A. I don't remember, and this doesn't refresh my recollection in that regard.

Q. Do you know whether the trustee ever spoke to either of those gentlemen about the transaction?

A. I don't remember.

Q. The next sentence of the e-mail says, "The numbers relating to the transaction are still being finalized, so the post-closing amounts are subject to change." Do you see that?

A. Yes, I do.

Q. What was the trustee's understanding of that sentence when he received this e-mail?

A. That this was a pretty rough and ready balance sheet that kind of gave you, at most, a gross approximation of what we might be talking about.

Q. Did the trustee understand that the valuations being given for the assets in this transaction were generally estimates?

A. Yes.

Q. Did he understand that, given the emergency nature -- let me just make sure we



1 J. KOBAK  
2 agree on that. Would you agree that this  
3 transaction was negotiated and approved under  
4 emergency circumstances?  
5 MR. CARDEN: Objection to form.  
6 A. I believe the Court described it as  
7 extraordinary circumstances, and I would  
8 certainly subscribe to that.  
9 Q. Under those extraordinary  
10 circumstances, would you agree that there was no  
11 time to do a final and formal appraisal of all  
12 the assets in the deal?  
13 A. Yes.  
14 MR. CARDEN: Objection to form.  
15 Q. And would you agree there was no time  
16 to do a formal and final appraisal of all of the  
17 financial trading assets in the deal?  
18 MR. CARDEN: Same objection.  
19 A. Yes, I don't know what kind of  
20 analysis might have been done of those things  
21 before, if some of them were marked to market on  
22 a daily basis, for instance.  
23 Q. You don't know whether the assets were  
24 being marked to market on a daily basis during  
25 the week of September 15 through to September

1 J. KOBAK  
2 MR. CARDEN: Objection to form.  
3 Q. Are you aware of that?  
4 A. I don't recall seeing that. I  
5 particularly do not recall the phrase "massive  
6 human carnage."  
7 Q. Do you have any basis for knowing  
8 whether or not Lehman was marking its books in  
9 the ordinary course the way it had in the weeks  
10 before the bankruptcy?  
11 A. I do not know. It might have been  
12 doing more marked to market since there were  
13 assets that were going to be sold. I don't  
14 know.  
15 Q. It might have been doing less?  
16 A. It might have been doing less. It  
17 might have been doing more.  
18 Q. When the trustee received the balance  
19 sheet attached to this e-mail, did the trustee  
20 say that there was anything objectionable about  
21 this transaction as described in this  
22 approximate balance sheet?  
23 A. Well, we were trying to --  
24 MR. CARDEN: Objection to form.  
25 A. -- understand it. It -- it refers to

1 J. KOBAK  
2 19?  
3 A. I think they probably were or efforts  
4 were probably being made to do that. Whether  
5 they were all successful, and again, I think  
6 there may have been some things that were  
7 illiquid and that really couldn't be valued very  
8 effectively.  
9 Q. When you say other assets were  
10 probably being marked, do you have any basis for  
11 knowing one way or the other?  
12 A. No, just general understanding of how  
13 a brokerage firm would probably work.  
14 Q. Well, you understand it wasn't  
15 operating normally that week --  
16 MR. CARDEN: Objection.  
17 Q. -- the brokerage firm?  
18 A. In many respects it was not operating  
19 normally, that's correct.  
20 Q. You understand that the president of  
21 the firm, Mr. McDade, has testified there was  
22 massive human carnage and that the people were  
23 not marking the books normally, as far as he  
24 knew?  
25 MR. MAGUIRE: Objection to form.

1 J. KOBAK  
2 investments in consolidated subs. There had  
3 been some discussion that subsequently happened  
4 that the subs in fact would be transferred and,  
5 as it turned out, we got this Pich note instead.  
6 So there were a lot of uncertain items on the  
7 balance sheets.  
8 We were trying to get a handle on what  
9 kind of assets we were talking about that we  
10 might be left with, what the approximate  
11 magnitude of those would be, and that was  
12 essentially what we were interested in.  
13 The total capital of 2.4 would show  
14 that you had a solvent entity, so to speak. I  
15 think we took some of that with a little bit of  
16 a grain of salt because you had amounts due from  
17 receivables and payables to receivables that we  
18 thought would probably have a lot of variability  
19 into it, but it did give us comfort that there  
20 would probably not be a massive shortfall in  
21 what would be needed to satisfy customer claims  
22 at least, and again, that was our primary focus.  
23 Q. The numbers in this draft balance  
24 sheet are different from the numbers in the APA,  
25 correct?

J. KOBAK

and a few other questions of that nature.

Q. Can you remember any other specific questions?

A. No, I cannot.

Q. Can you remember any other information that's referenced by the "limited other information" you reference in paragraph 6 of your affidavit?

A. No. Again, I think we had some discussions with Lehman -- with Weil or Lehman people and with regulators about to the effect that there didn't seem to be any huge problems in terms of missing customer property, in terms of somebody having walked off with accounts or missing accounts not being there or something of that nature.

Q. And in this first sentence you reference that you got information through the lawyers for the holding company. I assume you're referring to Weil Gotshal?

A. That's correct.

Q. Any other lawyers, or just Weil Gotshal?

A. Just Weil Gotshal, I believe.

J. KOBAK

protracted liquidation claims process?

A. To the extent possible, I thought that a purpose of this transaction was to achieve that. How protracted the claims process would be I don't know, but it certainly would not be likely to give people, even in the best of circumstances, even in a small brokerage house, access to their accounts, you know, immediately on Monday morning, as they might be able to have access if another solvent broker took over the positions and started trading or allowed people to trade in those accounts.

Q. And that goal or purpose, that phrase, "the sale would facilitate the transfer of customer accounts to solvent broker-dealers, with minimal disruption to the customers' ability to access their accounts," that was accomplished through the Barclays sale, correct?

A. Yes, it proved, as I think your client is well aware, a lot more complicated to transfer all the property. We're still trying to do the final stages of that, as I think you know, but by and large, as I understand it, at least to the customer, most customers I think

J. KOBAK

Q. And then you say, "...from largely unidentified employees of Lehman entities."

Again, when you say "largely identified" in paragraph 6 of your affidavit, can you remember any who were identified?

A. No, I can't, and I didn't mean -- I'm sure that somebody told us their names at the time. I didn't mean that there were anonymous voices on the phone. I just cannot recall who they were.

Q. So you say, based on all that information, you say, "The trustee and I believed and discussed with SIPC that the sale would facilitate the transfer of customer accounts to solvent broker-dealers with minimal disruption to the customers' ability to access their accounts." Do you see that in your affidavit?

A. Yes, I do.

Q. Again, does this just go back to what you said earlier, that the idea here was for customers to have their property moved to a solvent broker-dealer so they could have immediate access and not have to go through a

J. KOBAK

thought that what had been at Lehman was now at Barclays, in the case of Barclays, or at Neuberger & Berman in the case of Neuberger Berman.

There were very few instances that that may not have been the case, but I think in 99.99 percent of the cases as far as the customer was concerned, everything went smoothly. There were some number of accounts, as I've said, that remained with us, so they're being satisfied through the claim process.

Q. That goes to the next -- so at least this first part of it has been accomplished in terms of transferring the customer accounts and providing immediate access?

A. Well, assuming the Court approves our order next Thursday, yes, that whole stage will be completed.

Q. The next sentence says, "We believed, based on the information available to us, that there would be sufficient customer property in the reserve account or otherwise segregated or available at depositories to support the transfer of the great bulk of customer accounts

J. KOBAK

and satisfy any remaining customer claims."

What was the basis for that belief?

A. Well, the balance sheet -- first of all, we were told that the S.E.C. thought for the most part that property that should have been in segregation was probably in segregation, that Lehman was basically a pretty well run enterprise while it was a functioning broker-dealer, and that nobody knew about any massive amounts of property that weren't there.

We were given a little further assurance by the balance sheet in Exhibit 441, which did seem to show, you know, roughly speaking, a solvent brokerage firm. I think if we had -- if it is -- if even this rough balance sheet had shown a huge negative in total capital, that would have given us a lot of pause that there might well not -- there might well be a big shortfall which would carry over to customer property.

Q. Did you ever tell anyone that? Did the trustee or its advisors ever tell anyone that if this transaction resulted in any kind of negative balance at Lehman after the deal, that

J. KOBAK

to anyone else that it would not approve the deal if the deal would result in a shortfall for remaining customer claims?

A. I don't believe we had any direct discussion of that that I can recall.

Q. The next sentence of your affidavit in paragraph 6 you say, "Based on the information and assurances we received." What are the assurances you received?

A. I think it's what I testified to.

Q. There were no assurances from Barclays, were there?

A. I think -- I don't know if we were given assurances directly. I think the regulators -- certainly there were assurances that Barclays would cooperate in the account transfer process and was willing to take the -- take the accounts. Might not be willing to take the liabilities, but it was willing to take the accounts.

Q. You then say, "Based on all of that, the trustee concluded the sale was in the best interests of LBI customers, creditors and the general estate."

J. KOBAK

you would not approve it?

A. I don't know if we said we wouldn't approve it. We certainly had discussions with SIPC. SIPC was certainly not interested. What it would have done, you have to ask them, but they would be very concerned about exposure if there were huge massive shortfalls in customer property to start with in a transaction, and we certainly had discussions with the S.E.C.

There was also, frankly, just discussions about getting into something where the records were, you know, a nightmare or something where, you know, you couldn't tell what was in people's accounts, and it did turn out that the records, while there are difficulties in access to the records and reconciling them and there were a lot of transactions in the last week, in fact Lehman as an operating broker had maintained pretty good records so that those kind of concerns really didn't exist to nearly the extent that they could have.

Q. Other than in discussions with SIPC and the S.E.C., did the trustee ever communicate

J. KOBAK

When exactly did the trustee decide to support and approve the sale?

A. I think we had decided that we would support the transaction certainly by the time of the hearing on the 17th. It was also obviously important to us what people said during that hearing.

Q. And after that decision to support the transaction on the 17th, was there ever a time where the trustee -- was there ever a time where the trustee considered changing his support and not supporting a transaction?

A. I don't believe so.

Q. Do you know whether before the sale closed on Monday, the 22nd, the trustee or his advisors ever reviewed the minutes from the Lehman board meeting that approved the sale?

A. We did approve -- we did review the minutes. I don't know if we did it before the closing or at some time after that.

Q. You believe you received the minutes at least before the closing?

A. I don't believe we received the minutes. I believe my corporate partner Ellen

| Page 70                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Page 71                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1 J. KOBAK</p> <p>2 Friedenberberg had to make several requests of</p> <p>3 them. I think she went up to Weil's offices or</p> <p>4 Lehman's offices several times and basically had</p> <p>5 to find the minutes. I think it was sometime</p> <p>6 afterward that we first received the minutes,</p> <p>7 but it may have only been a draft of the</p> <p>8 minutes.</p> <p>9 Q. So there was some effort before the</p> <p>10 closing to simply review as a matter of</p> <p>11 diligence what the board approval was?</p> <p>12 A. No. No. No. I think we asked for it</p> <p>13 after the closing.</p> <p>14 Q. I see. So before the close, what, if</p> <p>15 anything, did the trustee or its advisors do to</p> <p>16 review what the board had meant and approved,</p> <p>17 what the board had done?</p> <p>18 A. I think we were just told that the</p> <p>19 board had approved the transaction. I don't</p> <p>20 think we had any reason to question that.</p> <p>21 Q. And so, again, just because I</p> <p>22 misunderstood, just so the record is clear, your</p> <p>23 testimony is that you don't believe the trustee</p> <p>24 or his advisors saw any board minutes from the</p> <p>25 Lehman board meeting that approved the sale</p> | <p>1 J. KOBAK</p> <p>2 before the closing?</p> <p>3 A. I don't believe. I think we saw them</p> <p>4 for the first time maybe several weeks after the</p> <p>5 closing.</p> <p>6 Q. Did you understand before the closing</p> <p>7 that the Lehman board had delegated to Lehman</p> <p>8 officers the task of finalizing the negotiations</p> <p>9 for the transaction?</p> <p>10 A. Well, I think we had been told that</p> <p>11 the transaction had been authorized, and you</p> <p>12 would expect that officers of the company would</p> <p>13 be the people who would negotiate the deal and</p> <p>14 implement the deal.</p> <p>15 Q. And even though as of Friday afternoon</p> <p>16 Mr. Giddens is now formally appointed the</p> <p>17 trustee, he's immediately faced with a</p> <p>18 transaction that's been negotiated by other</p> <p>19 people. So is his view -- is it his role at</p> <p>20 that time simply to approve rather than to try</p> <p>21 to renegotiate?</p> <p>22 A. Well, we ran -- I mean, what happened</p> <p>23 was we were in the Federal District Court at</p> <p>24 Pearl Street and we got the order signed, and</p> <p>25 after it was signed and we made copies and so</p>                                                                             |
| Page 72                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Page 73                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <p>1 J. KOBAK</p> <p>2 forth, we got in a car and raced down Broadway</p> <p>3 so we would get to the Bankruptcy Court in time</p> <p>4 for a 4 o'clock hearing.</p> <p>5 The time was very tight. After that,</p> <p>6 we spent from 4 until, you know, whatever time</p> <p>7 that hearing ended, 1, 2 in the morning in the</p> <p>8 Bankruptcy Court.</p> <p>9 Q. Let's look at paragraph 7 of your</p> <p>10 affidavit, and we'll look at the sale hearing.</p> <p>11 We might as well mark it as the next exhibit.</p> <p>12 (Exhibit 442, Transcript of the Sale</p> <p>13 Hearing, marked for identification, as of</p> <p>14 this date.)</p> <p>15 Q. You mentioned that shortly after the</p> <p>16 appointment, you then moved down to the</p> <p>17 bankruptcy courthouse for the hearing that was</p> <p>18 to be held to approve the sale on the afternoon</p> <p>19 of the 19th?</p> <p>20 A. That's correct.</p> <p>21 Q. And do you arrive just as the hearing</p> <p>22 is beginning or do you have a chance to meet</p> <p>23 with people to discuss the transaction before</p> <p>24 the hearing begins?</p> <p>25 A. I can't remember exactly when we got</p>                                                                            | <p>1 J. KOBAK</p> <p>2 there. I remember that Mr. Caputo and I</p> <p>3 actually had time to go to Chipotle and get</p> <p>4 something to eat because we hadn't had anything</p> <p>5 to eat all day, so we had a few minutes to do</p> <p>6 that. I think we got to the courthouse, the</p> <p>7 Bankruptcy Court. We wanted to be sure we were</p> <p>8 there in advance of 4 o'clock, if possible. The</p> <p>9 place was jammed. There were over -- you know,</p> <p>10 we wanted to make sure we got a seat at the</p> <p>11 table, so to speak, if nothing else.</p> <p>12 And so we were there for some period,</p> <p>13 not long, but some period of time I think before</p> <p>14 the proceeding came to order.</p> <p>15 Q. Did you have any substantive</p> <p>16 discussions before the hearing came to order</p> <p>17 about any changes in the transaction?</p> <p>18 A. We had a discussion with Mr. Miller</p> <p>19 where Mr. Miller said the transaction has</p> <p>20 changed. The 70, 69 billion is now 4 -- I'm not</p> <p>21 sure if he used these terms, these exact</p> <p>22 numbers, but 47.4 versus 45.9, the same kinds of</p> <p>23 figures that were subsequently described by Ms.</p> <p>24 Fife to the Court.</p> <p>25 Q. So you're not sure what numbers Mr.</p> |



J. KOBAK

Miller gave you, but he told you -- he gave you numbers roughly similar to the ones Ms. Fife gave to the Court?

A. I don't know if he used exactly the same numbers. He might have said 47, he might have said 47 to 48, but he certainly had a number in that range, and that it was -- there had been changes to what had been -- to the original Asset Purchase Agreement.

Q. And who was it in the meeting in which Mr. Miller said these things?

A. Who?

Q. Who was this -- who was gathered around Mr. Miller when he explained to --

A. Well, there were dozens of people gathered around, but the people he was addressing, I believe, as best I recall, were me -- were Mr. Giddens -- actually, Mr. Harbeck -- I should put them in order of who he was actually talking to -- Harbeck, Giddens, me, Caputo. I don't know if Mr. Kiplok was there at that time. So that would have been the group from our side. I don't remember if anybody else from Weil or elsewhere was with Mr. Miller. And

J. KOBAK

to the Court.

Q. Do you remember what Ms. Fife said in the off-the-record presentation during the recess?

A. No.

Q. Were you in attendance during that?

A. Yes.

Q. You don't recall anything she said?

A. No, I have a hard time separating what she said then from what she said later on the record in Court.

Q. Did anyone for the trustee take any notes during the off-the-record recess?

A. Not that I'm aware.

Q. Have you, in preparing for this deposition, did you consult with anyone at the trustee about what they may remember about what Ms. Fife said during that recess?

A. I didn't personally consult with them, no.

Q. I just want the record to be clear. It was -- your testimony is that the trustee and his advisors do not have a recollection of what Ms. Fife said during that recess?

J. KOBAK

it was a very brief conversation, you know, I think a few minutes, actually, before the Court proceeding was called to order.

Q. And this was a meeting separate from the discussion that took place in the recess shortly after the hearing began? You're talking about a meeting that took place before the hearing even came to order?

A. I believe that's correct.

Q. Do you recall that there was a recess shortly after the sale hearing began?

A. I recall one or maybe even two recesses. I don't recall the exact timing of them.

Q. Well, when you reference the off -- an off-the-record presentation in paragraph 7 of your affidavit, what are you referring to there?

A. Okay. Well, I think we had this discussion with Mr. Miller. At some point I think there was an off-the-record presentation to the assembled masses by Ms. Fife, I believe, also explaining some of the changes in the deal, and then I think we went back on the record and some of that was -- maybe it all was described

J. KOBAK

A. I don't have a recollection. I don't know if anyone else has a recollection.

Q. I would just like to ask that, since it is part of your affidavit, I think well within the scope of the 30(b)(6), that you make an inquiry as to whether anyone for the trustee or at Hughes Hubbard has a recollection of what Ms. Fife said during that recess.

MR. MAGUIRE: We can leave a space in the transcript and we can take that under advisement.

MR. HUME: Thank you.

INFORMATION TO BE PROVIDED: \_\_\_\_\_

Q. Going back maybe to the meeting you recall with Mr. Miller where he explained that the numbers had changed, I think you said he explained generally that, instead of the 70 and the 69, it was something on the order of the 47 to 48 and 45, roughly, is that accurate?

A. Yeah, pretty close to the -- I mean, I'll put it this way: When -- we weren't really surprised with the numbers that Ms. Fife used

J. KOBAK

when she reported to the Court 47.4 versus 45.5. So that was very consistent with whatever Mr. Miller told us.

Q. Okay. And did he explain to you, did Mr. Miller explain to you in the meeting you referenced where he gave you those numbers, why the transaction had changed?

A. No, I don't think specifically. I think he mentioned all the activity at Lehman so that it might be that assets that might have been available and liabilities that might have been associated with them would be smaller in magnitude because of activity that had taken place.

It might also have had to do with market conditions generally, valuation. I know that Ms. Fife I think attributed it to decline in securities prices during the ensuing days. I'm not sure that's how Mr. Miller described it, and I think we thought it might be more a diminution in Lehman's remaining assets that were available because there had been activity, people had been trying to get property out of Lehman during that week.

J. KOBAK

I've described these discussions about when we should go to court to do the filing, and part of the concern was the Fed's concern that they didn't want the filing to occur too early, and I think we subsequently learned or learned while we were at the courthouse that they wanted to be sure that their transaction had been unwound, so to speak, before the SIPA proceeding commenced. But I don't think beyond that we had any detailed knowledge of what the arrangements were.

Q. Did you learn during the hearing, the September 19 sale hearing, that the -- what the amount of the repo loan was that Barclays had made?

A. I don't recall. I don't recall learning that during the course of the hearing.

Q. Well, let me reference you on page -- on Exhibit 442 to page 63 of the sale hearing, and I can refer you -- if you get to page 63, let me know when you're there.

A. I'm here. I'm here.

Q. If you go down to line 16, Mr. Miller says, "Barclays, your Honor, has extended the

J. KOBAK

Q. So part of your understanding was there may have been counterparties who were seizing collateral, for example?

A. Customers getting things out, people closing transactions, perhaps seizing collateral. It could be any number of things.

Q. Just changes to what's available on the balance sheet?

A. I think that, you know -- and again, I don't think Mr. Miller said anything very specific along those lines.

Q. Did you understand, meaning did the trustee or his advisors understand, as of the time that he arrived at the sale hearing on September 19 that Barclays had replaced the Federal Reserve's lending position under its repo to the tune of approximately \$45 billion?

A. I think we knew that there was a repo that the Fed was very anxious to get out of, that Barclays may have substituted for that. I don't think we knew or were told the amount of that repo. I don't think we were told definitely what was involved. Really a lot of the basis for our knowledge was the fact that

J. KOBAK

sale to enable this extraordinary transaction and hopefully to be consummated. Yesterday, as your Honor has heard, Barclays basically stepped into the shoes of the Federal Reserve in connection with the Primary Dealer Credit Facility as to the \$45.5 billion Lehman borrowed last Monday and received the collateral that Lehman had posted in connection therewith."

Does that refresh your recollection that during the sale hearing Mr. Miller explained that the repo loan that Barclays had made was approximately \$45 billion?

A. It doesn't refresh my recollection specifically, but --

Q. Is it --

A. -- obviously it's what he said.

Q. So did the trustee simply not understand the amount of the repo at the time of the sale hearing?

A. I don't -- I just really don't recall this. I'm not disputing that it was said. I'm not disputing that we would have understood this at the time. I just -- I guess I'm testifying personally now -- just don't recall it having

1 J. KOBAK  
2 been said at this occasion.  
3 Q. Well, did the trustee understand  
4 before the closing that the repo loan -- that  
5 Barclays had advanced \$45 billion of cash?  
6 A. Well, we understood what Mr. Miller  
7 was saying.  
8 Q. Okay. And you understood that there's  
9 a haircut in a repo?  
10 A. Yes.  
11 Q. So you understood that the collateral  
12 received by Barclays was supposed to be worth  
13 more than \$45 billion?  
14 A. In all likelihood, it would be worth  
15 or at least be valued, potentially valued, at  
16 something higher than the face amount of the  
17 loan.  
18 Q. And you knew that as part of the final  
19 purchase agreement Barclays was to receive all  
20 of that collateral in the purchase?  
21 MR. CARDEN: Objection to form.  
22 A. I think that was -- was agreed to,  
23 yes, eventually.  
24 Q. When you say "eventually," was it your  
25 understanding it was agreed to as of the time

1 J. KOBAK  
2 don't dispute that that's similar to the figures  
3 that were described for the repo.  
4 There was also a representation to the  
5 Court that the broker would have at least \$20  
6 billion of assets left behind, and so those were  
7 the numbers and it was really the 47.4 being  
8 described as the value of the transaction and  
9 the fact that there was a close correspondence  
10 between the value of the assets and the value of  
11 liabilities and that there were substantial  
12 assets being left behind in the brokerage firm.  
13 Those were the things that were material to us.  
14 Q. Did the trustee understand that there  
15 was also an amendment to the APA relating to the  
16 residential mortgage securities as of September  
17 19?  
18 A. I believe so, yes.  
19 Q. And did the trustee understand that  
20 that amendment transferred 100 percent rather  
21 than just 50 percent of the residential mortgage  
22 securities to Barclays?  
23 A. Yes, I believe so.  
24 Q. And did the trustee understand that  
25 the additional 50 percent that Barclays was

1 J. KOBAK  
2 the sale hearing on September 19?  
3 A. Well, I thought --  
4 MR. CARDEN: Same objection.  
5 A. I might have my timing out of  
6 sequence, but I thought that it was -- it  
7 subsequently became the case that Barclays  
8 basically kept the collateral that it had, was  
9 my understanding, rather than transfer it and  
10 have it transferred back and so forth, and that  
11 was said to be the \$47.4 of assets that were  
12 described to the Court.  
13 Q. So was it --  
14 A. Or a part of the 47.4.  
15 Q. That's exactly what I wanted to get  
16 to, which was what was the trustee's  
17 understanding of what assets comprised the \$47.4  
18 billion number?  
19 A. I don't think we had a specific  
20 understanding as to the exact composition of  
21 what the assets were in total. There was a  
22 representation to the Court, and no one  
23 disputed, that they were worth \$47.4 billion,  
24 and there was a corresponding representation  
25 that there were liabilities of 45.5 billion. I

1 J. KOBAK  
2 going to receive plus the 250 million cash  
3 consideration that Barclays was going to pay  
4 were going to be used to satisfy settlement  
5 obligations at the DTC?  
6 A. They were going to be, as I understood  
7 it, available for the DTC -- to the DTC for that  
8 purpose. I understood that DTC -- well, I may  
9 be jumping ahead, but I understood that DTC was  
10 expressing substantial misgivings about going  
11 ahead with processing any transactions unless it  
12 was fully satisfied that it had no potential  
13 liability.  
14 It was looking for anything it could  
15 get in that regard, and although this is some  
16 things it was looking for, I don't think it was  
17 by any means all that it demanded.  
18 Q. Did the trustee understand as of the  
19 time the sale was approved that Barclays was  
20 still going to retain for its own account 50  
21 percent of the residential mortgage securities?  
22 A. I think there was an understanding  
23 that, if I recall it, DTC got them, if they  
24 turned out not to be necessary, some of the 50  
25 percent -- whatever part of the 50 percent was

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J. KOBAK

not necessary, would actually be returned to LBI. That was my understanding.

Q. Of the additional 50 percent that was being given to Barclays?

A. Yes.

Q. But the original 50 percent in the APA would still remain with Barclays, correct?

A. Yeah, I don't think that was changed.

Q. Now, the 47.4 billion that Ms. Fife referenced, maybe you can look with me at page 47 where she references it, and you said she says basically the same that Mr. Miller told you, correct, page 47 at the top?

MR. DAKIS: Objection to form.

Q. You see at the top where she says "originally"?

A. Yes. No. No. I'm just --

Q. And she references approximately 70 billion?

A. Yes.

Q. That's a reference to the long positions in the APA, correct?

A. Yes, that's what we understood.

Q. And in your brief, in your Rule 60

J. KOBAK

brief, which we can show you, you state that your understanding of the deal was that Barclays would obtain the real estate, the business as defined in the APA, and \$47.4 billion of other assets; is that correct?

MR. MAGUIRE: Why don't you show the witness the motion.

MR. HUME: I'm happy to show him the brief.

(Exhibit 443, The Trustee's Motion for Relief Pursuant to the Sale Orders or, Alternatively, For Certain Limited Relief Under Rule 60(b), marked for identification, as of this date.)

Q. Do you have -- does the witness have Exhibit 443?

A. I do.

Q. Okay. If you turn to paragraph 3 and 4, they both say the same thing, I believe. Paragraph 3 of the trustee's Rule 60 motion, are you at paragraph 3?

A. Yes, I am.

Q. It says in the second sentence, "As presented to and approved by the Court, the

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J. KOBAK

revised deal called for Barclays to acquire the business, as defined in the APA, certain real estate properties and \$47.4 billion of additional assets in exchange for a payment of \$250 million plus the appraised value of the real estate and Barclays' assumption of \$45.5 billion in liabilities and certain cure costs and employee-related obligations." Do you see that sentence?

A. Yes, I do.

Q. So my question is what assets are included in the business that are not included in the \$47.4 billion number according to the trustee's understanding of the deal?

A. I'd have to look at the definition of the business.

Q. Okay. The APA that I gave you earlier with the handwritten edits is the same as the final APA, just the hand draft writing is typed up, so you can look back at that.

"Business" is defined without a paragraph break, so it's difficult to find. On page 2 toward the top of the APA, right after the definition of "breakup fee," you'll see the

J. KOBAK

definition of "business." See that?

A. Right.

Q. And I'll just read it into the record: "The APA defines 'business' as: 'The U.S. and Canadian investment banking and capital markets businesses of seller, including the fixed income and equities cash trading, brokerage, dealing, trading and advisory businesses, investment banking operations and LBI's business as a future's commission merchant.'"

That is the business -- it was the trustee's understanding that that was the business that Barclays was acquiring?

A. Under the APA, that's correct.

Q. Okay. And so my question for you is from your brief in paragraph 3, and you say the same thing in paragraph 4, seems to be saying that there are -- the \$47.4 billion does not include the real estate. Let's get that clear first. Would you agree with that?

A. Yes.

Q. So there are some assets in this transaction that are not included in the \$47.4 billion, correct? The trustee understood that?



J. KOBAK

A. Well, yeah, whatever assets might be in the business --

Q. So whatever assets --

A. -- as defined.

Q. Whatever assets might be in the business would be included in the deal and not included in the 47.4 billion?

MR. CARDEN: Objection to form.

A. That's what we say. That's what Mr. Maguire says on page 3 here.

Q. Okay. So the three real estate buildings are not included in the 47.4, correct?

A. That's correct.

Q. What other assets are not included? Just any assets in the business?

A. That's what it says here.

Q. Okay. Can you give me any other specific examples of assets that would not be included in the 47.4?

A. Well, I know, I mean, I know there are books and records and things like that. There are things that are important but don't have substantial monetary value. That was certainly would be included.

J. KOBAK

Q. For example, customer lists, what -- and intangible property like customer lists, would that have been included in the 47.4?

A. I think so. I don't know if there were actual customer lists or just accounts that went over.

Q. Is it your understanding --

A. And Barclays was acquiring and paying for a lot of the employees, so most of the brokers would go over with their customers. I don't know that any particular value was ascribed to that.

Q. Well, whatever value might be ascribed to it, was it your understanding that customer lists were or were not included in the \$47.4 billion?

A. I don't think I had any understanding either way.

Q. Well, you're telling us today, the trustee is telling us today that this transaction had a limit, a valuation cap, is that accurate?

A. There was a value ascribed to the things that Lori Fife was talking about that was

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very clearly stated as \$47.4 billion as against liabilities of 45.9 billion.

Q. But did anyone ever tell you what assets she was talking about or understood she was talking about when she talked about the 47.4?

A. She says we're only selling assets that have a value of \$47.4 billion.

Q. Right, and she's comparing that to the 70 billion, which is in subsection D, the 70 billion. So is it -- was it your understanding, the trustee's understanding, that the assets that replaced the long positions from the original deal had a value now of 47.4 billion?

A. Yeah. Basically, I think that was our understanding and of the many types of securities that, as I recall, were described as part of the 70 billion would now be worth 47.4 billion.

Q. Right. So what had been the long positions of approximately 70 was now a collection of assets worth approximately 47.4, is that your understanding?

A. A value of 47.4, not approximate

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anymore.

Q. Not approximate anymore. So you understood that the deal no longer involved an approximate number, it was an absolute number?

A. I don't think it was an absolute. I don't think anyone would have been surprised if things were a few million under or over, but I don't think -- I thought this was supposed to be a good estimate, was presented to the Court and to the creditors and to the regulators as a good estimate by knowledgeable people after a lot of due diligence had been done over the days between the 17th and the 19th.

So we thought it was a quite reliable figure. Maybe not down to the penny, but a quite reliable figure. We certainly didn't think there would be a material valuation -- variation from that range of figure.

Q. Now, let me move you two pages later. Ms. Fife reports to the Court on the change with respect to the residential real estate mortgages on page 49?

A. Yes.

Q. Second paragraph, she says, there was

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a change -- there was a provision in the old agreement pursuant to which the parties were sharing in the residential real estate mortgages, and then she says Barclays is now taking all of those. She says at the end -- she talks about the DTC issue and says, "The collateral will remain with Barclays."

This is the first amendment we talked about a few minutes ago, you recall that?

A. Uh-huh. Yes.

Q. Do you know one way or the other whether the estimated value for the 50 percent of residential real estate mortgage securities was included or not included in the 47.4 number Ms. Fife gave the Court?

A. No, I don't know, and as I've testified, I don't think that we took -- anyone really took the \$3 billion estimate at face value.

Q. Did you ever -- do you know if the trustee ever discussed with anyone what the components of the \$47.4 billion number were, what assets comprise that number?

A. At that time, I don't believe so.

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of it would be the repo collateral, but I don't believe that we necessarily assumed that that was necessarily all of it.

Q. Did the trustee believe that the 15c3 asset, which we'll talk more about later, the \$769 million in the 15c3 type asset, the trustee believed that that asset was included in the \$47.4 billion number?

A. I don't know and I don't know how Barclays -- in our view, that was all was contingent at best as far as -- because the requirements of the Rule 15c3 had to be satisfied, the S.E.C. had to approve it and so forth, so I don't know how Barclays might have considered or not considered that.

Q. That brings me to another question I wanted to ask. The trustee believes that the deal that was approved had a valuation cap for any assets that were not real estate assets and not the business, and that cap was 47.4 billion, correct?

A. Yes.

Q. And was that \$47.4 billion cap to be determined according to what the value of the

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Q. So let me make sure the record is clear on this. Before the closing of this transaction on September 22, did the trustee ever discuss with anyone what assets were included in the \$47.4 billion number?

A. Other than the kind of general descriptions that we've been talking about, no.

Q. So, in other words, there was never a discussion of whether that number included both the repo collateral and the clearance box assets?

A. I don't believe so.

Q. Was there --

A. There were separate discussions, as you know, of the clearance box assets.

Q. Was it -- I mean, was the trustee ever given any components of the 47.4?

A. I don't believe so.

Q. Did the trustee understand the 47.4 to be the repo collateral?

A. Not specifically. It was obviously consistent with the numbers that were given for the repo collateral, so I think we assumed that a large part of it at least, a very large part

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assets were on the Lehman balance sheet or how they were valued by Barclays or what their fair market value was determined in some other way?

A. I don't think we knew the specific basis for it. I think we thought there was an agreed value of 47.4 billion.

Q. What was the basis for believing it was an agreed value?

A. Ms. Fife said that there was a value of 47.4. That's certainly what LBI must have believed and what must have been described to LB -- to LBHI, I'm sorry, what must have been described to LBHI.

Q. Did anyone at Barclays ever tell the trustee that Barclays agreed that that was the cap on the assets or any subset of the assets in the deal?

A. I don't believe so. They clearly subsequently had taken the position -- is taking -- are taking the position that that's not the cap. On the other hand, these figures were used at the hearing and nobody stood up on Barclays' behalf and said there was some approximate approximation involved, that they

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valued the figures differently, that this wasn't the extent of what was being acquired or anything to that effect. And this was to a room full of hundreds and hundreds of creditors as well as the Bankruptcy Court and the regulators.

Q. Did the trustee take notes during the hearing in which the \$47.4 billion number was written down?

A. Not that I am aware of, I don't believe so.

Q. You understand when I say the trustee, I mean the trustee or his advisors?

A. Those of us who were there is how I'm interpreting the question.

Q. And the answer is the same?

A. I don't believe so.

Q. Do you know when the trustee or his advisors first obtained a transcript from the hearing from the September 19 sale approval hearing?

A. No, I don't specifically recall that.

Q. I assume you did not get one before Monday morning at closing?

A. I doubt it.

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Q. And in subparagraph A, Romanette ii, it lists out three categories of assets that were defined as purchased assets to be received by Barclays, correct?

A. That's correct.

Q. The first are securities transferred in the repo under Subsection A. Are you familiar with that?

A. Yes.

Q. Was it your understanding that those assets were to be included -- were included in the \$47.4 billion valuation cap?

A. Yes.

Q. Did the trustee make any investigation during the weekend before the closing to determine what the portion of the 47.4 was attributable to those repo securities?

A. No.

Q. Subsection B refers to such securities and other assets held in LBI's clearance boxes. You're familiar with that provision?

A. Yes, I am.

Q. Does the trustee believe that that provision was nullified by the DTC letter

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Q. What did the trustee do, if anything, to determine how the \$47.4 billion number had been formulated after the sale hearing?

That was not a well asked question, so let me try again.

A. That's one thing we can agree on.

Q. After the sale hearing, did the trustee do anything to determine how the \$47.4 billion number was formulated?

A. I don't believe so.

Q. At the time of the closing -- maybe it's better if I ask you these questions with the clarification letter, the final version.

This one you don't need to mark. This is Exhibit 25. You'll recognize Exhibit 25, Mr. Kobak, as the final executed version of the clarification letter. Do you recognize it?

A. Yes. Yes, I do.

Q. It lists at the beginning on the first page in Section 1 of the clarification letter, it replaces certain assets that were in the APA with certain other assets. Are you familiar with that?

A. Yes.

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under --

A. I'm sorry, I cut off your question.

Q. That's okay. Let me just ask it again. Am I correct that the trustee's position is that there were no securities in LBI's clearance boxes that were to be transferred to Barclays?

A. LBI's clearance boxes at DTC, that's correct, because we had a separate tripartite agreement with Barclays, DTC and the trustee which specifically dealt with those assets.

Q. Does the trustee -- did the trustee make any inquiry in terms of what the value was of any clearance box securities that it believes were to be transferred?

MR. MAGUIRE: Objection to form.

A. At that time, no. At that time, I don't believe so.

Q. Does the trustee believe that the clearance box securities were also supposed to fit within the \$47.4 billion valuation cap?

A. I think it's quite possible that they might have. In some ways, since this all came up over the weekend and, in our view, was dealt

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with differently, it's, you know, perhaps wasn't really relevant or determinative.

Q. Was the trustee ever informed that the estimated value of the clearance box securities was approximately \$1.9 billion?

Let me make the question more precise, so I withdraw that.

Prior to the closing of the sale on Monday, the 22nd, was the trustee ever informed that the estimated value of the LBI clearance box securities referenced in Section 1(A)(ii)(b) was approximately \$1.9 billion?

A. I don't know. I don't recall that specific number. I can't really recall if we were given any specific number at that time as to what the contents of those boxes -- what the value might be or might be deemed to be.

Q. Subsection C of this provision refers to exchange-traded derivatives. You're familiar with that provision?

A. Yes, I am.

Q. And is it the trustee's position that all of the exchange-traded derivatives are supposed to fit within the \$47.4 billion

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valuation cap?

A. Again, I'm not sure. Again, we have a difference of opinion, I guess, as to what the effect of this provision is, which I presume you'll get to later, particularly the parenthetical.

Q. We're going to get to that, but my question is, this -- given what the agreement says, the trustee understood this agreement was subject to a \$47.4 billion valuation cap for all assets other than the real estate and the business, correct?

A. Right.

Q. And all I'm trying to understand is what precisely was supposed to fit within the \$47.4 billion valuation cap?

A. I wouldn't have expected either B or C to be considered assets ancillary to the businesses. Therefore, I think we would have assumed that in one way or another those must have been accounted for in the 47.4 billion.

Q. And also in the 45.5 billion on the liability side, to the extent they carried liabilities, correct?

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MR. MAGUIRE: I'm sorry, can you repeat that question?

Q. Well, do you understand -- let me make sure the foundation is clear. Do you understand that when Barclays took over -- forget about the margin issue, okay? We'll talk about margin later and collateral for exchange-traded derivatives. You understand that Barclays took over the LBI exchange-traded derivatives accounts in this transaction?

MR. MAGUIRE: Objection to form.

A. Took over, I believe they assumed to some extent LBI's former position at OCC and assumed the liabilities.

Q. All right.

A. That was the purpose of the transfer agreement.

Q. You understand that, in addition, that the -- withdrawn. Do you understand that LBI's exchange-traded derivatives included positions that would have been both assets on day one and positions that would have been liabilities on day one?

A. Yes, I did.

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Q. And your understanding is Barclays took both the assets and the liabilities associated with those positions, I'm not talking about the margin now, but with those exchange-traded derivative positions?

A. As a result of the transfer and assumption agreement, yes.

Q. And as a result of this position, correct?

MR. MAGUIRE: Here you're talking about positions now, or are you talking about --

MR. HUME: Only positions.

Q. I'm only talking about positions. The actual options and futures, longs and shorts that are exchange-traded derivatives, that's all I'm asking you now. We're going to talk about margin later. I just want to understand, I want to make sure we understand each other that exchange-traded derivatives may include options that on a particular day have value?

A. Or --

Q. And they may have options that are short and are negative value, which are a



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2 liability on your balance sheet as opposed to an  
3 asset. Do you understand that?

4 A. I do understand that.

5 Q. And you understand Barclays took both  
6 those liability positions that were derivatives  
7 and the asset positions that were derivatives?

8 A. That would be my understanding.  
9 Whether it would be Barclays' interpretation if  
10 that were all that the agreement said, I'm not  
11 so sure, but there certainly was another  
12 agreement by which Barclays clearly assumed  
13 liabilities associated with positions.

14 Q. Now, the liability exchange-traded  
15 derivative positions, were they supposed to fit  
16 within the \$45.5 billion cap that Lori Fife gave  
17 the Court?

18 A. I don't know for sure where the 45.5  
19 came from. As I've said, I think what was  
20 important to us was the rough matching of the  
21 assets and the liabilities, which really wasn't  
22 so different from the 70 versus the 69 when  
23 you're talking about long and short positions  
24 and so forth.

25 Q. I understand that what's important to

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1 J. KOBAK  
2 exchange-traded derivative liability  
3 positions --

4 A. I don't know how --

5 Q. -- in the 45 --

6 Please let me finish the question.

7 A. I'm sorry.

8 Q. Based on the trustee's understanding  
9 of the numbers given to the Court, there would  
10 be no room within the liability number given the  
11 Court for any exchange-traded derivative  
12 liability positions, correct?

13 MR. MAGUIRE: Objection to form.

14 Misstates prior testimony where the witness  
15 specifically said he assumed a large part of  
16 it would be the repo, but not necessarily  
17 all.

18 Q. Harvey Miller -- do you want to go  
19 back to the transcript page 63?

20 A. I answered these questions before.

21 Q. I don't know --

22 A. Harvey Miller said there was a repo  
23 with the same numbers. Lori Fife used these  
24 numbers. Lori Fife did not say how the numbers  
25 were derived, and no one from Barclays or anyone

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2 you is the matching, but I want to understand  
3 what you understood these numbers to mean. Lori  
4 Fife told the judge 47 -- she gave the judge two  
5 numbers: 47.4 and 45.5. I want to know whether  
6 the trustee understood that the exchange-traded  
7 derivative positions were included in those two  
8 numbers?

9 A. I don't know that we had a view one  
10 way or the other. I think we would have assumed  
11 that they were.

12 Q. How could you know -- you knew there  
13 was a repo loan, correct? Harvey Miller told  
14 the Court the repo loan was --

15 A. Yeah.

16 Q. And he told the Court the repo loan  
17 was 45.5 billion, correct?

18 MR. MAGUIRE: Asked and answered.

19 A. That's what the transcript shows.

20 Q. So the repo loan is the same number  
21 that Lori Fife gave the Court as the liabilities  
22 associated with assets?

23 MR. CARDEN: Objection to form.

24 A. 45.5 is the same number.

25 Q. So there's no room for any

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2 else got up and said how they were derived.

3 The Court and the creditors were told  
4 this transaction had a value of 47.4 versus 45.5  
5 liabilities. Clearly the repo part would be a  
6 substantial portion of that. How these  
7 valuations were reached was not explained. I  
8 think over the weekend changes were made to the  
9 deal which we understood were meant to leave  
10 people in essentially the same place, and no one  
11 got up in court and said the 47.4 versus the  
12 45.5 is not in fact the figures, as I would  
13 think it would behoove someone to have done.

14 We did not have specific information  
15 as to how these numbers were derived or exactly  
16 what was included and what was not included in  
17 them.

18 Q. Nor could you at the time of the  
19 closing give a coherent explanation of how these  
20 assets in the clarification letter fit into  
21 those numbers, could you?

22 MR. MAGUIRE: Objection to form.

23 Q. You didn't know, is that fair?

24 A. I think I just answered that question.

25 Q. Okay. Let me just make sure I

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understand the position of the trustee.

If the exchange-traded derivative liability positions -- is that phrase a clear phrase based on what we talked about earlier?

The positions that are liabilities that are derivatives, there would be a liability on the balance sheet net negative value on day one?

A. Uh-huh.

Q. I'm calling those exchange-traded derivative liability positions?

MR. MAGUIRE: I'm sorry, you're saying a net liability?

MR. HUME: They would be a negative. The position itself would be a liability.

MR. MAGUIRE: Are you saying that the short positions exceeded the value of the long positions?

MR. HUME: No, not yet. I'm not saying that yet. I'm just saying right now -- I'm talking about the short positions.

MR. MAGUIRE: You're saying if the short and long positions represented separately --

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MR. HUME: I'm not saying that.

MR. MAGUIRE: You're talking about a balance sheet. That's what's confusing everything.

Q. I'm saying if the liability positions from the exchange-traded derivatives plus the repo loan exceeded 45.5.

A. I don't know how the 45.5 or the 47.4 were arrived at. I don't know if somebody looked at this and said the net derivative position is a wash, the net derivative position is a liability, the net derivative position is a plus or we're going to go position by position and add up the assets against the liabilities. I don't know how that was done for purposes of the figures that were given to the Court.

Q. Do you have any basis for believing that it was done? Do you have any -- let me ask -- make it clear what I'm saying.

Do you have any basis for believing that either side to this transaction knew what the value was of the exchange-traded derivative positions at the time this deal was approved or at the time this deal closed?

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A. I don't know. I'm sure they made estimates of that. I don't know what they were, how they went about it, and in any event, I do not know to what extent -- how these were treated for purposes of the figures that were given to the Court.

Q. If, if the exchange-traded derivative positions cause the assets and the liabilities in this deal to go above 45.5 on the liability side and above 47.4 on the asset side, what's the trustee's position? Are the derivatives not part of the deal?

MR. MAGUIRE: Objection to form. I don't think it's -- the witness is not here to give a hypothetical position.

MR. HUME: I need to understand the trustee's position on this, so we're going to have to find a way to ask the question that you will allow me to ask it.

Q. The trustee's position is that there's a valuation cap on all of the assets in the deal that are not -- the business and the real estate, and that cap is 47.4 billion, correct?

A. That's correct.

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Q. And the liabilities associated with those assets were supposed to be 45.5 billion, correct?

A. That's correct. That's what was described to the Court.

Q. And what I'm asking you is, I will represent to you that if those are the caps, the exchange-traded derivative positions on the liability side would cause the liabilities to be higher than 45.5. Does that mean those liabilities are out of the deal?

MR. CARDEN: Objection to form.

MR. MAGUIRE: Are you also representing that the positive long exchange-traded derivatives were -- had a value that was less than the liabilities?

MR. HUME: I'm not being deposed here.

Q. Let me just take it one step at a time. I just want to know if the liabilities exceed 45.5, does that allow the asset number to go up?

MR. MAGUIRE: I don't think you can put a hypothetical -- actually, I don't think you can put a hypothetical to the

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witness at all, but if you're going to put a hypothetical, I think you need to put the whole hypothetical to the witness. In any event, I don't think a hypothetical is appropriate.

Q. In any event, the trustee did not know the value one way or the other, it was not given any information -- the trustee was not given any information about the value of the exchange-traded derivatives before the closing; is that correct?

MR. DAKIS: Objection to form.

A. I believe that's correct.

Q. Did the trustee ever ask anyone why there were no valuation estimates provided for any of the assets listed in the clarification letter?

Let me restate the question so it's completely accurate. We just went through three purchased assets, the repo collateral, the clearance box assets, and the exchange-traded derivatives, correct?

A. That's correct.

Q. And you would agree with me that there

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are no valuation estimates provided in the clarification letter for any of those assets, correct?

A. That's correct.

Q. Did the trustee ever ask anyone why the clarification letter did not include valuation estimates?

A. At the time?

Q. Before the closing.

A. I don't believe so.

Q. Did the trustee ever tell anyone that it believed the contract should include \$47.4 billion valuation cap?

A. I don't think the trustee ever expressed that because it had been expressed to the Court. I think what we understood was happening over the weekend that certain things in the nature of what substitute assets were being substituted for others so that the overall deal would be in the same framework that I've already described and that was described to the Court, and I think our position is that if someone was going to change the deal materially, that should have been disclosed to the Court and

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the creditors as well as to the parties.

Q. Did the trustee review the sale order before it was issued?

A. Yes.

Q. Did the trustee recognize that the sale order did not include a valuation number for either the assets or liabilities in the deal?

A. There was no valuation number that I recall in that order.

Q. Did the trustee or his advisors ever tell anyone before the sale order was issued that the sale order ought to include the valuation numbers that the trustee understood to be part of the deal?

A. I don't believe -- I don't recall any such discussion.

Q. Did the trustee tell anyone before the closing that the trustee's understanding was that there was a \$47.4 billion valuation cap on all non-real estate assets in the deal?

A. I don't believe so.

Q. And just so my question is precise, did the trustee ever tell anyone that it

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believed there was a \$47.4 billion valuation cap on any assets in the deal?

MR. MAGUIRE: I'm sorry. Can you repeat that question?

Q. It's the same question. I just want it to be precise. I'm not just -- it's still unclear to me which assets the cap applied to.

So my question is, did the trustee ever tell anyone before the closing that the trustee understood there to be a \$47.4 billion valuation cap on any assets in the deal?

A. I don't believe there was any such discussion.

Q. Now, you said a earlier you understood that the valuations in the APA were estimates of book value, correct?

MR. CARDEN: Objection to form.

A. In the original APA they were said to be approximately, approximately \$70 billion at book value, as I recall.

Q. And then in the balance sheet that you were sent on the evening of September 18, you understood that those were estimated numbers, correct?

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1 J. KOBAK  
2 A. Yes.  
3 Q. And you understood those were also  
4 book value numbers?  
5 A. I didn't -- I'm not sure we understood  
6 what the numbers were based on.  
7 Q. Okay. So you had estimated numbers in  
8 the APA and estimated numbers in the balance  
9 sheet, and it's your testimony that you believed  
10 the \$47.4 billion number was not an estimate?  
11 MR. MAGUIRE: Asked and answered.  
12 A. I believe it was an estimate, but it  
13 certainly was not said to be a kind of gross  
14 approximation or anything like that. It was  
15 presented as a number, and again, I don't think  
16 anyone would be surprised if it was off a little  
17 bit, but I do not think we thought there would  
18 be a material variation in that or a material  
19 variation between the amount of liability  
20 that -- the spread between liabilities and  
21 assets, and I believe at one point in the  
22 hearing the Court said that a difference of \$500  
23 million would clearly be material. I think even  
24 a lower standard would be material, but we  
25 certainly didn't think there would be a

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1 J. KOBAK  
2 to answer?  
3 MR. MAGUIRE: This is a 30(b)(6)  
4 witness, not an expert witness.  
5 MR. HUME: You can instruct him not to  
6 answer, but let me ask the question.  
7 MR. MAGUIRE: No. No. No. No. The  
8 witness is here to give the trustee's  
9 knowledge, not to answer hypothetical  
10 questions. The witness has no basis to  
11 answer hypothetical questions.  
12 MR. HUME: The witness is here as the  
13 trustee's 30(b)(6) to tell us what your  
14 position is. I'm going to ask him a  
15 question. If you want to instruct him not  
16 to answer, go ahead.  
17 Q. The question is this: Is it the  
18 trustee's position that if the net position on  
19 the exchange-traded derivatives was a negative  
20 \$1.5 billion over and above the \$45.5 billion  
21 referenced to the Court, and all of the other  
22 assets fit within the 47.4, would Barclays have  
23 had the right to come back and get that \$1.5  
24 billion covered?  
25 MR. MAGUIRE: Objection to form.

1 J. KOBAK  
2 difference of any considerable magnitude.  
3 If there had been, then it would seem  
4 to me that's something that should have clearly  
5 been discussed with the parties and the  
6 regulators and should clearly have been  
7 disclosed to the Bankruptcy Court when it was  
8 asked or so that the deal that the Bankruptcy  
9 Court approved had some, you know, was the  
10 actual deal that was being done.  
11 Q. If the liabilities had been higher  
12 than 45.5, the financial trading liabilities,  
13 the short positions in the derivatives had been  
14 higher than 45.5 --  
15 A. Assuming those are valued on a  
16 position-by-position basis --  
17 Q. Yes.  
18 A. -- and not on some kind of net basis.  
19 Q. Yeah. Let's -- let me ask you --  
20 MR. HUME: I'm allowed to ask him a  
21 hypothetical.  
22 MR. MAGUIRE: No, I don't believe -- I  
23 can't imagine how you would be allowed to  
24 ask him a hypothetical.  
25 MR. HUME: Are you instructing him not

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1 J. KOBAK  
2 A. I don't know the answer to that. That  
3 would be up to Barclays to -- to argue whatever  
4 it wants to argue at the time.  
5 MR. HUME: Let's take a break.  
6 THE VIDEOGRAPHER: The time is 10:54.  
7 We're going off the record.  
8 (Recess.)  
9 THE VIDEOGRAPHER: The time is 11:05.  
10 We are back on the record.  
11 BY MR. HUME:  
12 Q. Mr. Kobak, let me refer you to  
13 paragraph 8 of the clarification letter. You're  
14 familiar with the provision in paragraph 8,  
15 Romanette ii, that refers to the fact that  
16 Barclays shall receive \$769 million of  
17 securities held in the Rule 15c3 account or  
18 securities of substantially the same nature and  
19 value; are you familiar with that provision?  
20 A. I'm familiar that there was a  
21 provision that said that to the extent permitted  
22 by applicable law.  
23 Q. And was it your understanding that  
24 that asset was supposed to fall within the \$47.4  
25 billion valuation cap?



| Page 122                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Page 123                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
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| <p>1 J. KOBAK</p> <p>2 MR. CARDEN: Objection to form.</p> <p>3 A. I think, as I testified earlier, I'm</p> <p>4 not sure how I thought Barclays would account</p> <p>5 for that after the fact, I mean it being added</p> <p>6 after the fact in relation to the 47.4 figure</p> <p>7 that had been told to the Court.</p> <p>8 In our view, this is a contingent</p> <p>9 liability or a contingent asset, I guess, of</p> <p>10 Barclays. It's in a part of the agreement that</p> <p>11 deals with account transfers, which it seems to</p> <p>12 me it was clearly related to, and we don't</p> <p>13 believe that the circumstances under which</p> <p>14 Barclays might be entitled to this \$769 million</p> <p>15 have ever arisen and, in all likelihood, may</p> <p>16 never arise.</p> <p>17 Q. If Barclays had the same view as you</p> <p>18 do about this provision, which they don't, but</p> <p>19 if they did, and all the other assets that are</p> <p>20 not real estate and not the business added up to</p> <p>21 47.4 billion, would that be what you view to be</p> <p>22 an acceptable and approved outcome?</p> <p>23 MR. MAGUIRE: That's a hypothetical.</p> <p>24 MR. CARDEN: Objection to form.</p> <p>25 A. I have no idea. I have no idea how</p> | <p>1 J. KOBAK</p> <p>2 Barclays might or might not have taken this into</p> <p>3 account with respect to the figures that were</p> <p>4 used. I understood that the point of the</p> <p>5 exercise over the weekend was that the deal</p> <p>6 changed in various ways, but in our</p> <p>7 understanding, the basic parameters of the deal</p> <p>8 that I have described never changed or, if they</p> <p>9 had changed, that should have been disclosed to</p> <p>10 everyone, including the Court.</p> <p>11 So I have no idea how Barclays might</p> <p>12 or might not have accounted for this, and again,</p> <p>13 I don't think the circumstances under which this</p> <p>14 amount will ever be received by Barclays have</p> <p>15 arisen and they may never arise because we may</p> <p>16 face a very substantial shortfall in being able</p> <p>17 to pay customers in full.</p> <p>18 Q. When you say you don't know how</p> <p>19 Barclays would account for it, I asked you</p> <p>20 earlier how this \$47.4 billion valuation cap was</p> <p>21 supposed to be implemented. Does it depend on</p> <p>22 Barclays accounting?</p> <p>23 A. No, no, I didn't -- I'm sorry, I</p> <p>24 didn't -- I was using "accounting" in a</p> <p>25 colloquial sense. I meant I don't know what</p> |
| Page 124                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Page 125                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <p>1 J. KOBAK</p> <p>2 value, if any, Barclays attributed to it for</p> <p>3 purposes of trying to equate this with the 47.4</p> <p>4 billion that was disclosed to the account.</p> <p>5 It seems to me if it was accretive or</p> <p>6 additive because Barclays was looking for</p> <p>7 opportunities to get additional assets that</p> <p>8 hadn't been disclosed, that's something that</p> <p>9 should have been disclosed to people and it</p> <p>10 should have been disclosed to the Court.</p> <p>11 If it thought, on the other hand, that</p> <p>12 the other things it was getting were worth</p> <p>13 substantially less than 47.4, then maybe it</p> <p>14 could have included this to get back to the</p> <p>15 47.4, and I don't know how Barclays treated it,</p> <p>16 but --</p> <p>17 Q. So the 15c3 assets might be included</p> <p>18 in the 47.4 and might not, depending --</p> <p>19 A. I don't know. And in our view, it's</p> <p>20 not something that Barclays is likely to obtain</p> <p>21 anytime soon until there's compliance with Rule</p> <p>22 15c3 and there's no shortfall in property due</p> <p>23 customers, and those circumstances have not</p> <p>24 arisen.</p> <p>25 Q. Knowing what the trustee and his</p>                   | <p>1 J. KOBAK</p> <p>2 advisors know now about the assets referenced in</p> <p>3 the clarification letter, and in particular, in</p> <p>4 Section 1(A), Romanette ii of the clarification</p> <p>5 letter, the repo collateral --</p> <p>6 A. Uh-huh.</p> <p>7 Q. -- the clearance box assets and the</p> <p>8 exchange-traded derivatives, knowing what the</p> <p>9 trustee knows now about those assets, do you</p> <p>10 think it was possible under the circumstances of</p> <p>11 this transaction to determine that all of those</p> <p>12 assets were worth approximately \$47.4 billion as</p> <p>13 of September 19?</p> <p>14 MR. CARDEN: Objection to form.</p> <p>15 MR. MAGUIRE: Objection to form. Can</p> <p>16 you explain -- maybe rephrase that question?</p> <p>17 Q. Do you think it was possible to value</p> <p>18 those assets under the circumstances of that</p> <p>19 week with that level of precision?</p> <p>20 MR. CARDEN: Objection to form.</p> <p>21 MR. MAGUIRE: Same objection.</p> <p>22 A. If it wasn't possible to do it, a</p> <p>23 representation shouldn't have been made in open</p> <p>24 court as to what the value was, and if it was</p> <p>25 made and Barclays thought it was too imprecise</p>                                                         |

J. KOBAK

or did not accurately state the deal, it seems to me it would have behooved Barclays to have their lawyers, very well qualified lawyers, very experienced lawyers, stand up and say so.

Q. You recall -- you recited for me earlier a conversation you had with Harvey Miller before the hearing, and then obviously we've talked about what was said in the hearing.

Other than those two things, did anyone ever tell the trustee or his advisors that the transaction was subject to a \$47.4 billion valuation cap on all assets other than the real estate and what you call the business?

A. I don't believe there was any such discussion. I believe that was our understanding, but I don't believe there was any further specific discussion beyond the representations made in open court.

Q. Can you look back -- do you have your brief, the Rule 60 brief in front of you?

A. Yes, I do.

Q. Could you go to paragraph 1 of the brief.

A. Yes, I have it.

J. KOBAK

Q. It says in the sentence at the bottom of the first page, "The deal that Barclays wants was supposedly documented over the ensuing weekend of September 20 and 21, 2008 and, according to Barclays, gives it as much as \$6.7 billion in additional assets from the LBI estate over and above the \$47.4 billion in assets that were disclosed to the court." Do you see that?

A. Yes, I do.

Q. If you go over to paragraph 4, the brief lays out what that 6.7 billion consists of?

A. Right.

Q. Clearance box assets -- we'll come back to that -- 15c3 assets, and the OCC margin. See that?

A. Yes.

Q. And 1 billion in other. It leaves out the repo collateral. Is it -- I'm just trying to make sure I understand the trustee's understanding of the numbers. Is it the trustee's understanding that the repo collateral was worth 47.4 billion?

MR. MAGUIRE: Objection to form.

J. KOBAK

A. I think if you look -- maybe I'm not understanding your question, but I think if you look at footnote 1 back on page 2, that also says what we do not include in the \$6.7 billion.

Q. That's right.

A. Which would be any additional discount that Barclays obtained.

Q. My question is, I understand --

A. Among other things.

Q. My question is you're saying the 6.7 billion is all, all of these things, the clearance box assets, the 15c3 asset, the derivatives margin all are in excess of 47.4?

A. That's what the brief seems to say.

Q. My question is much more simple. Is it the trustee's position that the repo collateral was worth at least \$47.4 billion?

MR. CARDEN: What day?

Objection to form.

Q. That's a good question. What date was this valuation cap supposed to be? Was it September 19 --

MR. MAGUIRE: The witness is not here to make an assertion as to valuation, which

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is clearly not the subject of this deposition. If you're asking him what his understanding was at the time or any factual information, that's entirely different.

MR. HUME: The 30(b)(6) is your understanding at all times since September 15 regarding the value of all the assets in the deal.

MR. MAGUIRE: Right. That's fine. So you can ask him about his understanding. You cannot ask him about a position which is something far beyond his expertise to give.

BY MR. HUME:

Q. My question is: Does the trustee currently believe that the value of the repo collateral that Barclays received was \$47.4 billion or more?

MR. DAKIS: Objection to form.

A. The trustee I believe currently understands that the value was at least 47.4 and might have been more than 47.4. There seems to be substantial questions about that.

Q. And what is the basis for that understanding?

J. KOBAK

In that respect, the deal, even though it's different, isn't so different in kind of overall impact as -- as the deal that had originally been proposed with the 70 versus the 69 and so forth.

Q. The trustee then receives the clarification letter and its representative -- the trustee's representative signs the clarification letter, correct?

A. Yes, I believe it was early --

Q. Monday morning?

A. -- Monday morning, and there had been a few other drafts at least over the Sunday night and into the wee hours of Monday morning.

Q. And I believe you state, or the brief states that the trustee and his advisors did not actively participate in the negotiation of the drafting of the clarification letter, is that correct?

A. Yeah, that's correct.

Q. And so you relied on Weil Gotshal to represent Lehman in the negotiations of the clarification letter, is that fair?

A. That's correct. The regulators were

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also there, I believe, so when there were questions about the 15c3, I think they had some role to play in that as well.

Q. After receiving the final version of the clarification letter, did the trustee understand that all of the collateral in the repo was to be a purchased asset acquired by Barclays?

A. Yes, we understood -- yes, that was our understanding.

Q. And was it your understanding that that would include any excess collateral that there might be?

A. Yes.

Q. And did the trustee have an understanding at any point over the weekend before the closing about the \$7 billion cash problem with JPMorgan?

A. No, I think we knew that there -- because I think there had been some separate negotiations going on between Chase and Barclays, but I don't think we really understood the full effect or implications of that until later at the time or somewhat before the time we

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asked the Court to approve that transaction in December.

Q. So the trustee's understanding of the \$7 billion problem arose after the closing?

A. I believe so, yes.

Q. So before the trustee's understanding about the \$7 billion problem, the trustee just assumed it was all the collateral and the repo would be a purchased asset?

MR. DAKIS: Objection to form.

Q. All I'm trying to understand is whether -- did the trustee have an understanding -- I believe you've already answered this. Now I just want to be clear. At the time of the closing, did the trustee have a view as to the value of all of the repo collateral that was being transferred to Barclays as a purchased asset?

A. I don't think the trustee had independent knowledge. We heard the figures that Harvey Miller used. We heard the 47.4 that Lori Fife used. As I've said, I think we thought that the repo collateral must have been a large part of that 47.4 number. Whether it

J. KOBAK

was the entirety, we don't know. I don't know the exact basis on which the valuations were made.

Q. So, at the time of closing, was it the trustee's understanding the repo collateral may be close to 47.4, or even 47.4, but not more?

A. I don't think we would have thought it was more than 47.4. We probably suspected it might be something less than 47.4.

Q. But you understood there was a haircut and so you understood it might be about \$47 billion, correct?

MR. CARDEN: Objection to form.

MR. DAKIS: Objection.

MR. MAGUIRE: Objection to form.

A. We thought there would be a stated value of collateral that would be larger by a few percent than the amount of the loan. Whether that reflected the actual value or the way Barclays actually valued it, we didn't know. We didn't have detailed knowledge of what was -- of what that collateral was, and as I say, I think some of it might be difficult to value in any circumstance. But we certainly couldn't

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A. And I mean to further my answer, if it turned out that in fact Barclays knowingly got collateral that was worth substantially more, that to us would be a violation of the -- of what had been disclosed to the court and, you know, that I think is part of our Rule 60 proceedings as it is of the other people who were here.

Q. But that would be based upon actual fair market values, not a mark at the time by a custodian bank, correct?

MR. CARDEN: Objection to form.

MR. MAGUIRE: Same objection.

A. Well, I think if the evidence -- I mean, I don't want to get into what our legal position is, but my understanding is if the evidence showed that Barclays was knowingly telling the court that it was getting something worth 47.4, and in its own mind told its board of directors it was getting something worth over 50, I won't characterize how that might be characterized, but it seems to me that would clearly be a material breach -- or, a material change in the contract that should at least have

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been disclosed to the court.

Q. At the time that you were having discussions with Barclays and JPMorgan regarding the settlement in December of 2008, did you -- did the trustee or his advisors tell Barclays that they believed there was a \$47.4 billion valuation cap on all the non-real estate assets in the deal?

A. I don't think so. I think we may have had some discussions with Cleary as to the effect that the numbers weren't matching up very well, and that gave us a lot of concern. And I think we made it very clear that in our application we were going to reserve our rights to investigate the transaction and not limit our rights to look into the sale agreement in the future.

And I think when the Creditors Committee got involved, they took that position as well and it eventually got embodied not only in my application but in the order itself that the Court signed.

Q. Can I --

A. So we weren't waiving any rights.

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Q. I understand.

A. There clearly were some potential factual discrepancies that we wanted to investigate further.

Q. My question was simply whether you raised that. When you spoke to the Court to ask for the Court to approve the JPMorgan settlement, including what you may have said in chambers off the record, did the trustee or his advisors ever tell the Court that they believed the entire deal was subject to a \$47.4 billion valuation cap on all non-real estate assets?

A. I don't think we put it that way, but I think I did tell the Court that we were reserving -- that we had many questions about the deal, others had questions about the deal, exactly what went on over the weekend, what it did to the economics of the deal, and that we were reserving our rights to seek reformation, to deal with questions of interpretation or otherwise under the agreement.

Q. At the time that you asked the Court to approve the JPMorgan settlement, had the trustee or his advisors reached even an

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approximate valuation of all of the assets in the repo collateral, including everything that was being transferred in the JPMorgan settlement?

MR. CARDEN: Objection to form.

A. I don't believe we had reached a final valuation. We took some comfort from these figures that we got primarily from JPMorgan and from the statements of the parties, including Barclays, that the real value of the collateral was substantially less than any of the stated values.

But I don't think that we had signed off on that. I think we understood that there was going to be further investigation of that, which the Court I think invited and which eventually led to the 2004 examinations.

Q. The trustee must, at a minimum -- am I correct in saying that the trustee must, at a minimum, in December of 2008 have reached a conclusion that the entire repo collateral transferred to Barclays plus everything it was receiving in the JPMorgan settlement was properly and fairly valued at less than \$47.4



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billion?

MR. CARDEN: Objection to form.

MR. DAKIS: Objection to form.

MR. MAGUIRE: Objection to form.

A. No, I don't think that's true at all.

We thought there was clearly property that should come over to Barclays. Our position has always been that, to the extent the purchase agreement -- to the extent that the purchase agreement was described to the Court and was described to us and gives Barclays certain rights, Barclays is perfectly entitled to those things.

We don't believe that they're entitled to anything more than that, and the purpose of this transaction was to say, look, some of the collateral, whatever its value was, that was supposed to get to Barclays didn't get there. This is a substitute transaction, actually saved the estate money, so it seemed in the best interests of the estate, but we're not waiving our rights to look at the whole transaction.

To the extent it makes Barclays whole and they get 47.4 billion as a result of this,

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that's fine, they're entitled to that. To the extent it might give them several billion dollars more, that's a material change that should have been disclosed to the courts and we'll pursue whatever rights we have to that amount, just as we'll pursue our rights on the questions of interpretation where we think Barclays has taken assets or made claims to assets to which we don't believe they're entitled under the Asset Purchase Agreement.

Q. I really need to make sure I understand what you just said, so I'm going to ask a refined version of the question.

Are you saying that the time you asked, you, the trustee, asked the Court to approve the JPMorgan settlement, it was an open question in the trustee's mind as to whether the entire repo collateral, including everything received in the settlement, may or may not exceed \$47.4 billion?

A. Yes. We took comfort that it might not because of what people had told us, but we -- we wanted to look at the whole transaction, the repo collateral, the positions

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Barclays was taking and everything else, and if we thought that Barclays at the end of the day was getting things, it managed to get things over the weekend that it wasn't entitled to, or that weren't consistent with the deal as it was described to the Court, that that might be actionable and we wanted to not waive our rights in that regard.

Q. And by not waiving your rights, did you understand yourself to be asking the Court to approve a settlement whereby assets would be given to Barclays that you would then claw back if you subsequently determined that the assets exceeded \$47.4 billion?

A. I don't know if it would be those assets or other assets. It may be that we had a cause of action.

Q. But you asked the Court to approve a settlement that might have resulted in Barclays receiving assets in excess of the valuation cap at 47.4 billion?

A. It's possible that it could have. We were comfortable at the time that at least the present value didn't appear to do that, but we

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did have questions about it and I thought we made that very clear to Barclays and to the Court.

Q. Well, you entered into a release with Barclays on the repo collateral, correct?

A. On that specific collateral, movement of that specific collateral, yes.

Q. Well, on all claims related to that collateral, correct?

MR. MAGUIRE: Objection to form.

A. Yeah.

MR. MAGUIRE: Misstating.

Q. If that collateral --

MR. MAGUIRE: Wait. If you're going to talk about the release, I think you need to get out the release.

MR. HUME: I'll show it to him. I'm happy to do that.

MR. MAGUIRE: There is a very broad savings clause in that settlement agreement, as you know.

MR. HUME: We'll get to that. We're not going to -- we'll get to it.

Q. Here's the question: Subsequent to

J. Kobak

the settlement that was approved by the Court, has the trustee reached a conclusion that all of the repo collateral, including everything received in the JPMorgan settlement, exceeds \$47.4 billion?

MR. MAGUIRE: We have --

A. We have not, as far as I'm aware, we have not received -- not reached a conclusion either way on that particular point.

Q. And for these questions about the value of the assets, my questions are the value of the assets on the date they were received, the date of the closing.

Would you agree, I mean, I asked -- I think I asked you earlier, but my questions are designed to understand the trustee's position about this valuation cap. Is it the trustee's position that the valuation cap is based upon the value on September 22?

MR. CARDEN: Objection to form.

Q. Open of business September 22 at the time of the closing?

A. I think our position -- well, I don't want to speak to what our position was. I think

J. Kobak

our understanding was that was the best value that people placed on the assets at that time as we understood it.

Q. Okay. And has -- you may not have -- the trustee may not have reached a final conclusion on the value of all the repo collateral. Has it reached a conclusion that it was worth more than 47.4 at the time the deal was approved?

MR. MAGUIRE: Objection to form. If you're asking what -- the trustee has obviously made assertions in its papers and has joined in LBHI's which makes assertions based on documents that have been provided by Barclays.

To the extent you're asking about the trustee's position in those papers, that's provided in those papers and is not an appropriate subject of inquiry for this witness.

MR. HUME: I want to know what the trustee thinks it's worth.

MR. MAGUIRE: If you're asking whether the trustee independently has done his own

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valuation --

MR. HUME: Yes.

MR. MAGUIRE: -- that's a different question.

Q. That's the question. I want to know if the trustee and his advisors, Deloitte & Touche or whoever else, has done a valuation of the Cusips in the repo collateral, including everything in the JPMorgan settlement, and reached a conclusion that, valued as of whatever you think the operative date is for purposes of your \$47.4 billion cap, has that valuation been done for the repo collateral?

A. I think that JPMorgan has done some work. As I testified earlier, I don't think they have reached a conclusion and I don't think we, speaking collectively, have yet reached a conclusion on that question. It's still something that's under investigation.

Q. Did you say JPMorgan? Did you mean Deloitte or is it JPMorgan helping you do this?

A. I'm sorry, Deloitte.

Q. They haven't been able to reach a conclusion. They have had a year. Are the

J. Kobak

assets difficult to value?

MR. CARDEN: Objection.

MR. DAKIS: Objection.

A. I've been told that some of them are difficult to value.

Q. It must be more -- there must be enough of them that are difficult to value that it makes a material difference?

MR. MAGUIRE: Objection to form.

MR. DAKIS: Objection to form.

Q. Would you agree with that?

MR. DAKIS: Objection to form.

Q. Why don't you just look at the marks?

MR. DAKIS: Objection to form.

MR. MAGUIRE: I think you need to rephrase that question.

Q. Your complaint is happy to just look at the marks.

MR. MAGUIRE: I don't think that's a question.

MR. DAKIS: Objection.

A. Our complaint speaks for itself.

Q. Okay. Let me just ask a question. I'll calm down.

1 J. Kobak  
2 MR. MAGUIRE: That would be good.  
3 Q. I'm trying to understand this baffling  
4 situation.  
5 A. I have that effect on everyone.  
6 Q. I assume you would agree with me that  
7 a significant portion of the assets transferred  
8 in that repo collateral were illiquid at the  
9 time they were transferred?  
10 MR. CARDEN: Objection to form.  
11 MR. MAGUIRE: You're --  
12 A. I know some of them were. I don't  
13 know what you mean by "a substantial  
14 proportion," and even if you want to do it by  
15 value or percentage, I don't think I could give  
16 you the answer as I sit here today. I know  
17 there was some stuff of more than nominal value  
18 that was illiquid and hard to value.  
19 Q. You would agree with me that you  
20 cannot simply look at the mark given by either  
21 JPMorgan or Bank of New York that night of the  
22 transfer, September 18 or the next day, the  
23 19th, to determine the value of the assets in  
24 the repo, would you agree with that?  
25 MR. CARDEN: Objection to form.

1 J. Kobak  
2 to value the repo collateral. It's now December  
3 2009. They still haven't done it. Would you  
4 agree with me --  
5 A. They have done work on it.  
6 Q. Now you're interrupting me.  
7 MR. MAGUIRE: We'll agree. One goes  
8 at a time.  
9 Q. Would you agree with me that to  
10 properly value the repo collateral for purposes  
11 of the \$47.4 billion cap, you cannot simply look  
12 at the marks provided at the time of the repo  
13 transaction by the custodian banks?  
14 MR. CARDEN: Objection to form.  
15 MR. DAKIS: Objection to form.  
16 MR. MAGUIRE: Objection to form. This  
17 witness has no basis to answer that  
18 question.  
19 A. I have no basis to -- for once, Mr.  
20 Maguire is absolutely right. I don't know what  
21 as an accountant or valuation expert or somebody  
22 in this business, what somebody would do, what  
23 you would consider a good thing, an accurate  
24 gauge to look at or an inaccurate gauge.  
25 Q. It is within the scope of the notice.

1 J. Kobak  
2 MR. MAGUIRE: Objection to form.  
3 MR. DAKIS: Objection to form.  
4 MR. MAGUIRE: Again --  
5 A. Somebody did some valuation to come up  
6 with a 47.4 figure that was disclosed to the  
7 Court, and if in fact they thought they were  
8 over the weekend going to be able to get much  
9 more than 47.4 or get additional things that  
10 were not disclosed to the Court, that seems to  
11 me to be something that should have been  
12 disclosed to the Court and it goes to the --  
13 Q. That's not my question. I'm sorry.  
14 A. -- enforceability of the contract.  
15 Q. I'm going to interrupt you. You're  
16 not asking my question.  
17 MR. MAGUIRE: Please. Please. You  
18 cannot interrupt the witness.  
19 MR. HUME: I can if he doesn't answer  
20 my question.  
21 MR. MAGUIRE: I'm sorry, we cannot  
22 conduct the deposition on that basis. We  
23 cannot do a deposition if you're going to do  
24 that.  
25 Q. The question is, you've asked Deloitte

1 J. Kobak  
2 What is your understanding of the value? You  
3 have asked Deloitte to value it.  
4 Do you think for a year have they just  
5 been staring at the marks from the custodian  
6 banks?  
7 MR. DAKIS: Objection to form.  
8 Q. Or are they trying to value it?  
9 MR. MAGUIRE: I think you can rephrase  
10 that question.  
11 Q. Would you agree that the trustee is  
12 asking for a more thorough valuation from  
13 Deloitte than simply to look at the marks from  
14 the custodian banks?  
15 MR. CARDEN: Objection to form.  
16 A. I think Deloitte did some work,  
17 concluded that they had trouble valuing the  
18 securities. We also asked them to look at the  
19 marks or the values that were given us by other  
20 parties.  
21 Q. Do you know why the residential  
22 mortgage securities came out of the deal?  
23 A. Came out of the deal?  
24 Q. Are you aware of the fact that the  
25 clarification letter states that the provision

1 J. Kobak  
2 in the APA stating that Barclays would receive  
3 50 percent of the residential mortgage  
4 securities was to be replaced with the assets  
5 set forth in the clarification letter?

6 MR. MAGUIRE: Can you just tell us  
7 what provision you're referring to?

8 MR. HUME: Sure.

9 Q. If you look at Section 1(A), Romanette  
10 i. If you need to, you can cross-reference your  
11 version of the APA to see what I mean. But if  
12 you look at Section 1(A), Romanette i, of the  
13 clarification letter, it says, "The items set  
14 forth in Clauses B, C and F" -- I'm sorry, this  
15 is not -- you need to look at Romanette ii.  
16 "With respect to clauses A, D and E of the  
17 definition of 'Purchased Assets' in the original  
18 agreement, instead of the items referred to in  
19 such clauses," and then it lists the assets  
20 described by the clarification letter. Are you  
21 familiar with that?

22 A. Where are you? What page?

23 Q. Okay. I'm sorry. Let me try to make  
24 a respectable record.

25 A. I'm sorry, I've got a lot of pages in

1 J. Kobak

2 A. Right.

3 Q. That's A. D is the long positions, do  
4 you see that?

5 A. Yes.

6 Q. And E are the 50 percent of each  
7 position in the resis, the residential mortgage  
8 securities?

9 A. Right.

10 Q. So Barclays was originally going to  
11 acquire residential real estate mortgage  
12 securities estimated to be worth about 3  
13 billion, with considerable skepticism as to  
14 whether they were really worth that, correct?

15 A. Right.

16 Q. And that was true as of the time of  
17 the sale hearing on Friday night, correct?

18 A. Yes.

19 Q. Here that provision is replaced and  
20 taken out of the deal, correct?

21 A. Right.

22 Q. And that would be a material change,  
23 correct?

24 MR. MAGUIRE: Objection to form.

25 Q. Well, if 500 million is the definition

1 J. Kobak

2 front of me.

3 Q. That's okay. So you're looking at the  
4 clarification letter. Maybe it would be  
5 simplest to get the APA next to it while we do  
6 this.

7 Do you have before you the  
8 clarification letter on page 1 and the APA on  
9 page 6?

10 A. Yes.

11 Q. Okay. Let me refer you back then on  
12 the clarification letter to 1(A), Romanette ii.  
13 It says, "With respect to Clauses A, D and E of  
14 the definition of 'Purchased Assets' in the  
15 original agreement," do you see that reference?

16 A. Uh-huh.

17 Q. And it says instead of those items,  
18 and then it lists three new items: Clearance  
19 for the repo collateral, clearance box  
20 securities and the exchange-traded derivatives?

21 A. Right.

22 Q. Right?

23 A. Right.

24 Q. And so if you look back at the APA, A,  
25 D and E are the retained cash?

1 J. Kobak

2 of "material," would you agree that --

3 A. That's the minimum definition of  
4 "material."

5 Q. The minimum. Then whatever the resis  
6 were worth, there was some value there and now  
7 they're no longer in the deal, correct?

8 A. Correct.

9 Q. Do you know why they came -- do you  
10 know why Barclays went from receiving those  
11 residential securities on the Friday night what  
12 the deal was approved to not receiving them at  
13 the closing under the clarification letter?

14 A. I thought I remembered that they went  
15 to DTC, and my understanding was, yes, there  
16 were things that were coming out of the deal and  
17 there were other things that were going into the  
18 deal, and the idea was that you would come up  
19 with a substitute deal that was relative, you  
20 know, equivalent to the deal that had  
21 described -- had been described to the Court, or  
22 one would think you would go back to the Court  
23 and describe that you have a materially  
24 different deal.

25 Q. So, as long as what went into the deal



1 J. Kobak  
2 was roughly equivalent to what came out of the  
3 deal, there would be no need to go back, only if  
4 it was different, correct?

5 MR. MAGUIRE: Objection to form.

6 A. Well, whether one might want to go  
7 back is -- maybe that's a question for Barclays,  
8 but from our point of view, certainly what would  
9 be material would be something that would  
10 materially change the economic basis of the  
11 deal, meaning the 47.4, its relation to  
12 liabilities, the fact that the trustee was going  
13 to get a minimum of something like \$20 billion  
14 in assets at the end of the day.

15 Q. Would you agree that if Barclays  
16 received something for the -- for -- in exchange  
17 for giving up the residential real estate  
18 securities, Barclays received something of  
19 equivalent value or lesser value, then the  
20 trustee would not have viewed it as necessary to  
21 go back to the Court?

22 MR. DAKIS: Objection to form.

23 A. Yeah, I don't think we would have a  
24 particular problem with that if that were the  
25 fact.

1 J. Kobak

2 A. I don't believe so.

3 Q. And did the trustee ever ask anyone  
4 before the closing specifically what the value  
5 of the repo collateral was?

6 A. No, I don't believe so.

7 Q. I'd like to show you what was  
8 previously marked in another deposition as  
9 Exhibit 338B. Exhibit 338B was, I believe,  
10 produced from the Creditors Committee during the  
11 a deposition of Michael Klein, and somebody may  
12 have represented that it might have been  
13 something written by Michael Klein.

14 In any event, my question to you is,  
15 first, are you familiar with this document?  
16 Have you seen it before?

17 A. I don't recall having seen it before.

18 Q. The question I want to ask is: Was  
19 this rough sketch of information shown to any  
20 representative of the trustee before the  
21 closing?

22 A. I don't recall having seen anything  
23 like this and I'm not aware that anyone else saw  
24 it.

25 Q. I would just ask, I think it's within

1 J. Kobak

2 Q. Do you know --

3 A. In fact, that's what we thought was  
4 happening over that weekend.

5 Q. Okay. Has the trustee performed or  
6 the trustee's advisor performed any valuation of  
7 what the residential real estate mortgage  
8 securities were worth as of the time the  
9 transaction?

10 A. I don't believe so.

11 Q. Did the trustee ask anyone before the  
12 closing -- I'm sorry, if we covered this before.  
13 I just want to be clear. Did the trustee ask  
14 anyone before the closing what the estimated  
15 value of the clearance box assets were?

16 A. I think you had asked me a question  
17 about 1.9 billion, and I don't recall that  
18 figure particularly sticking in my recollection.  
19 I really don't recall if we had -- we might have  
20 had some general number for the clearance box  
21 assets. I really don't recall. In our view,  
22 they came out of the deal in any case.

23 Q. Did the trustee ever ask anyone before  
24 the closing what the value of the  
25 exchange-traded derivatives were?

1 J. Kobak

2 the scope of the 30(b)(6), for the record for  
3 you to confirm with your colleagues who were  
4 there that weekend whether anyone at Hughes  
5 Hubbard saw this. Obviously if you have a copy  
6 of it in your files, I assume you would have  
7 produced it, but I would ask you to look for  
8 that too because it may not be in a e-mail, but  
9 either way to confirm with people who were there  
10 whether they were shown this or in the room when  
11 it was shown.

12 MR. MAGUIRE: We'll leave a space in  
13 the transcript and take that request under  
14 advisement.

15 MR. HUME: Thank you.

16 INFORMATION TO BE PROVIDED: \_\_\_\_\_

17 \_\_\_\_\_

18 \_\_\_\_\_

19 Q. Mr. Kobak, let's go back for a few  
20 more questions about presentation to the Court  
21 at the sale hearing on September 19. We can  
22 look at the transcript for some of this, if you  
23 wish, but let me just make sure we agree on a  
24 few things.

25 The trustee understood that it was an

| Page 170                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Page 171                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1 J. Kobak<br/>2 extraordinary hearing to begin with, correct?<br/>3 Friday night, five days after the largest<br/>4 bankruptcy in history to sell broker-dealer<br/>5 operations?<br/>6 A. I think the Court viewed to it as<br/>7 extraordinary, and I don't think we have any<br/>8 reason to differ with that description.<br/>9 Q. Did the trustee understand that the<br/>10 Court was also being told that there were major<br/>11 changes to the transaction?<br/>12 A. On the 19th?<br/>13 Q. Yes.<br/>14 MR. CARDEN: Objection to form.<br/>15 A. I think the Court was told that there<br/>16 were changes, yes, and, you know, the scope of<br/>17 it had -- I mean, the basic relationship had<br/>18 stayed the same, but the amounts involved had<br/>19 apparently been reduced and so forth.<br/>20 Q. And there were other changes, like the<br/>21 provision regarding a sharing of any profits on<br/>22 sales for a year was taken out?<br/>23 A. Yes.<br/>24 Q. Eagle Energy was taken out?<br/>25 A. Yes.</p>                                                          | <p>1 J. Kobak<br/>2 Q. There were other changes that Ms. Fife<br/>3 recounted?<br/>4 A. Yes, the real estate values had<br/>5 changed.<br/>6 Q. Real estate values.<br/>7 It was clear, wasn't it, to the<br/>8 trustee, that the written contract that had been<br/>9 submitted to the Court had to be amended to<br/>10 reflect those changes, correct?<br/>11 A. Well, it had to be -- our<br/>12 understanding was there was going to be a<br/>13 clarification letter which was going to -- the<br/>14 deal was described in court, that there was<br/>15 going to be a clarification letter that would<br/>16 clean up some items, would be consistent with<br/>17 the deal as it had been -- and the changes that<br/>18 had been described to the Court.<br/>19 We didn't understand, I don't think<br/>20 anyone understood, that anything more than that<br/>21 would be involved. Indeed, I have a clear<br/>22 recollection, as I think I say in my<br/>23 declaration, of leaving the hearing, going back<br/>24 to our offices, which is just across the street<br/>25 from the Bankruptcy Court, and basically</p>            |
| Page 172                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Page 173                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| <p>1 J. Kobak<br/>2 expecting that there would be a call that those<br/>3 who were doing the clarification letter would be<br/>4 done with it in 45 minutes or an hour, and then<br/>5 that proved not to be the case.<br/>6 So that's what we expected as of the<br/>7 end of the hearing.<br/>8 Q. You expected the contract would be<br/>9 amended to reflect what the judge was told and<br/>10 that that would happen promptly after the<br/>11 hearing, correct?<br/>12 A. Amendment isn't even I don't think the<br/>13 right word. Clarified, yes.<br/>14 Q. You don't think 20-plus billion<br/>15 dollars of assets is an amendment?<br/>16 MR. MAGUIRE: Objection to form.<br/>17 A. Well, whether it was an amendment or<br/>18 not, it was called a clarification letter, and<br/>19 it was going to take the Asset Purchase<br/>20 Agreement, clarify what had been said in court,<br/>21 make a few other minor, you know, language<br/>22 changes, I guess, or I don't know, scrivener<br/>23 changes.<br/>24 Q. A subsidiary here, a subsidiary was<br/>25 not something --</p> | <p>1 J. Kobak<br/>2 MR. MAGUIRE: Just make sure --<br/>3 A. I'm not --<br/>4 MR. MAGUIRE: Wait. Wait. We can't<br/>5 have two people speaking at the same time,<br/>6 so Hamish, this is very exciting stuff, but<br/>7 you need to make sure that you allow the<br/>8 witness to conclude his answer before you<br/>9 start your next question.<br/>10 Q. Do you agree that the APA had to be<br/>11 amended after the Court issued the sale order?<br/>12 A. It had to be amended or clarified,<br/>13 whatever word you want to use, yes, it should be<br/>14 embodied in an agreement that was consistent<br/>15 with what was said at court when the deal, as it<br/>16 was changed, was described, would incorporate<br/>17 those changes that were described to the Court,<br/>18 and the overall parameters of the deal as<br/>19 described to the Court.<br/>20 Q. And you expected that that would be<br/>21 done promptly, as you said, within 45 minutes<br/>22 that evening, you were hoping to see something,<br/>23 correct?<br/>24 A. I think that's what the Court<br/>25 expected, that people would kind of go out in</p> |

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1 J. Kobak  
2 the hallway, you know, the way people do in  
3 Bankruptcy Court and hammer things out to the  
4 extent there were things to hammer out. I mean,  
5 there was an agreement that had a lot of  
6 interlineated changes in it and so forth, so  
7 some of that amendment process had already  
8 begun.

9 Q. When you didn't see it within 45  
10 minutes or an hour or two hours, and you didn't  
11 see it -- and you didn't see a draft on Saturday  
12 at all, did you?

13 A. No.

14 Q. Did that cause the trustee to be  
15 concerned that the deal was being changed?

16 A. We had a -- I recall, and I cannot  
17 tell you exactly who made this call or to whom,  
18 but I think we called Weil or somebody to ask  
19 what had happened, maybe somebody called us, and  
20 basically we were told, well, people are tired,  
21 they're going to go home tonight, and maybe  
22 people will prepare sometime Saturday or Sunday  
23 over the weekend to get it done.

24 So certainly then we did not think  
25 that people were contemplating major changes

1 J. Kobak  
2 beyond those that had been described.

3 Q. When you finally did receive a copy of  
4 the clarification letter, did the trustee or his  
5 advisors review it?

6 A. Yes, we had people I believe -- I  
7 believe we had actually had somebody go to Weil  
8 maybe pretty early Saturday, Sunday morning,  
9 were basically told nobody else was there yet,  
10 and then eventually people came and, you know,  
11 the process began.

12 So we did have people there. There  
13 were a lot of discussions that went on that we  
14 weren't necessarily party to. Again, I don't  
15 think we -- we did not have a major role in  
16 negotiating the agreement, which, after all, we  
17 still understood to be basically clarifying the  
18 deal that had already been described and struck.

19 In the afternoon, a number of us got  
20 on the phone, and then we did have a couple of  
21 people at Weil who were there while some of the  
22 negotiations went on and some of the -- some of  
23 the drafting was done.

24 Q. You say in your affidavit in paragraph  
25 10 that, "Representatives of my firm were

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1 J. Kobak  
2 present at the officers of debtors' counsel."

3 That's what you were just describing,  
4 correct?

5 A. Yes, that's correct.

6 Q. Who was it from Hughes Hubbard who  
7 were there?

8 A. I believe it was Mr. Kiplok, and I've  
9 dreaded this because the reporter is going to  
10 ask me to spell the last name, but it's Anson  
11 Frelinghuysen.

12 Q. We'll spell it in a break. It's in  
13 the --

14 A. I'm not sure I can.

15 Q. Well, I think it's written in one of  
16 the contracts, so ...

17 A. But anyway, they were the  
18 representatives who were there.

19 Q. And were they there on both Saturday  
20 and Sunday?

21 A. I think they were there on Sunday.  
22 I'm not sure if they were there on Saturday.

23 Q. And did they communicate back to you  
24 or the trustee or other advisors of the trustee?

25 A. We had some phone calls or e-mails,

1 J. Kobak  
2 and there were a couple of drafts. I think the  
3 first one that I saw was in the evening, and  
4 then there were a couple more that came in, you  
5 know, the early morning hours or really getting  
6 close to the beginning of the working day that  
7 would have been e-mailed around. So we had some  
8 e-mail correspondence.

9 There was a long period of time when I  
10 and the trustee and SIPC and others were on the  
11 phone, but during most of that time essentially  
12 nothing happened. I mean, it was hours and  
13 hours of radio silence, basically.

14 Q. Now, when you saw the clarification  
15 letter, the trustee, collectively, his advisors,  
16 on Sunday with references to clearance box  
17 assets, the 15c3 assets, exchange-traded  
18 derivatives, did the trustee or his advisors  
19 ever conclude that those specific assets were  
20 not specifically described in court and that  
21 that was a problem?

22 A. Well, we had some discussions I think  
23 in court with DTC and we knew there were some  
24 negotiations with DTC and we -- I think we knew  
25 that was going to affect what happened to the

1 J. Kobak  
2 clearing boxes.  
3 I'd been presented with a Transfer and  
4 Assumption Agreement by OCC, so we knew that  
5 those -- we knew about, to some extent we knew  
6 about those aspects of the transaction already.  
7 Q. On the Friday night?  
8 A. Well, I certainly knew either Friday  
9 night or it might have gotten into Saturday  
10 morning I signed the Transfer and Assumption  
11 Agreement.  
12 Q. Shortly after the sale hearing?  
13 A. I think it was during a late break in  
14 the sale hearing. And it might have been before  
15 midnight. I just can't really remember.  
16 Q. So as of the time of the sale hearing,  
17 you knew the exchange-traded derivatives were in  
18 the deal; that wasn't a surprise in the  
19 clarification letter?  
20 A. Right. I think that had been in the  
21 Asset Purchase Agreement.  
22 Q. So --  
23 A. I mean, the question was what --  
24 whether Barclays was going to assume the  
25 liabilities and what happened to the deposits

1 J. Kobak  
2 point that Barclays seemed unwilling to assume  
3 liabilities and they were telling people that  
4 they were not going to clear anything on Monday  
5 when everybody opened for business unless they  
6 were fully satisfied that they were secured,  
7 protected, whatever word you want to use, and  
8 the clearing box -- clearing boxes and where  
9 they went became part of that concern in that  
10 discussion.  
11 Q. As of the Friday night, then, was it  
12 your understanding that clearance box assets  
13 were in the deal or not in the deal, or was it  
14 not clear?  
15 A. I'm not -- I just am not clear on the  
16 sequence completely. I thought that at the  
17 beginning of the hearing DTC was assuming that  
18 Barclays would step up and assume the  
19 liabilities, and I think they reached the  
20 conclusion either at the hearing or shortly  
21 thereafter that that wasn't the case, wasn't  
22 going to be the case, and they became very, very  
23 concerned about that.  
24 Q. And then there were negotiations about  
25 that over the weekend?

1 J. Kobak  
2 and so forth.  
3 Q. You said -- so, in terms of the  
4 derivatives appearing in the clarification  
5 letter, that was not a surprise given that you  
6 had signed the TAA on Friday night and that it  
7 was already in the APA?  
8 A. Well, the final version of the A -- of  
9 the clarification letter had a parenthetical  
10 that I don't believe was in any other draft  
11 which deals with deposits.  
12 Q. I'm going to come to that.  
13 A. So I'm sure we'll come to that.  
14 Q. We will come to that, but the question  
15 is the concept that the derivatives were in the  
16 deal was not something -- was something you knew  
17 about on Friday night at the sale hearing?  
18 A. Yeah, that was not a surprise.  
19 Q. The clearance box assets, you  
20 mentioned that you had a discussion Friday night  
21 with the DTC about that?  
22 A. I think during a break in the hearing  
23 or before the hearing or at some point I had  
24 some discussion with the DTC. I certainly was  
25 aware that the DTC was -- became unhappy at some

1 J. Kobak  
2 A. That's correct, and I -- we weren't  
3 really that much part of the negotiations. We  
4 just understood that DTC was saying we want  
5 everything we can get to make sure that we're  
6 protected because we do not know what the scope  
7 of liabilities might be, and that includes if  
8 Barclays is not going to assume liabilities, we  
9 want the clearing boxes to stay with LBI.  
10 Q. The clearing boxes, did anyone at DTC  
11 at any time before the closing ever tell you  
12 that they needed the clearance box assets, the  
13 LBI securities and other assets in the clearance  
14 boxes at DTC to remain with DTC?  
15 A. To remain with LBI?  
16 Q. Yes, to remain with LBI.  
17 A. So that DTC could look to them in case  
18 there were liabilities or obligations that were  
19 otherwise unsatisfied because of the tremendous  
20 amount of clearing and transactions they would  
21 be processing. I do -- I understood, the  
22 trustee understood, I think DTC understood that  
23 what we were talking about was the property in  
24 the boxes, not empty boxes themselves, which  
25 would not satisfy that concern of DTC.



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1 J. Kobak  
2 difference between those two numbers, correct?  
3 MR. MAGUIRE: I'm sorry, between which  
4 numbers?  
5 Q. Okay. Let's look at paragraph 7.  
6 A. 1.9 billion, yes.  
7 Q. 1.9. Let's be precise. Paragraph 7  
8 of your affidavit, you recount these numbers?  
9 A. Uh-huh. Yes.  
10 Q. I just want to ask you one question:  
11 You describe -- you use Ms. Fife's words when  
12 you describe that there would be \$45.5 billion  
13 in liabilities in connection with those assets.  
14 Can you just explain to me what you  
15 meant or understood that phrase to mean, "in  
16 connection with those assets"?  
17 MR. DAKIS: Object to form.  
18 A. I think it meant liabilities that were  
19 related in some way to the non-real estate  
20 assets, which could be longs and shorts and I  
21 guess it could be other things as well.  
22 Q. And did anyone ever explain to you  
23 what the 45.5 billion consisted of?  
24 A. Well, I didn't think it included  
25 liabilities such as liabilities -- or,

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1 J. Kobak  
2 Q. Now, the \$1.9 billion difference  
3 between -- that's given in those numbers between  
4 the liabilities and the assets, that \$1.9  
5 billion spread represents assets that would be  
6 going to Barclays under this deal that would not  
7 be available to satisfy any remaining customer  
8 claims in the estate, correct?  
9 A. That's correct.  
10 Q. And that was acceptable to the  
11 trustee?  
12 A. Yes. It was also explained that there  
13 would be at least \$20 billion left in the  
14 brokerage firm.  
15 Q. Who explained that to you?  
16 A. I think Ms. Fife or Harvey Miller said  
17 it at the hearing.  
18 Q. Other than what was said at the  
19 hearing, did anyone else make any  
20 representations to you about the \$20 billion  
21 that would remain with the estate?  
22 A. Not specifically, no.  
23 Q. And how much money, how much in assets  
24 actually did remain with the estate?  
25 A. I think if you look at our interim

1 J. Kobak  
2 obligations that Barclays was undertaking toward  
3 employees. I didn't think it included  
4 obligations on cure amounts under contracts and  
5 so forth. So it was related to the assets that  
6 were involved.  
7 Q. Okay. And just so I'm clear, did  
8 anyone ever explain to you, anyone from Weil  
9 ever explain to you what the \$45.5 billion  
10 number consisted of?  
11 A. In detail, no.  
12 Q. In any way?  
13 A. No.  
14 Q. Did anyone, other than someone at  
15 Weil, ever explain what that number represented,  
16 what it consisted of?  
17 A. I don't believe so.  
18 Q. Is it your current understanding that  
19 it's an approximation of the repo cash advance  
20 that Barclays made?  
21 MR. MAGUIRE: Objection to form.  
22 Asked and answered.  
23 A. Yeah, I mean, we've been over this  
24 several times. It is the same number. I assume  
25 that's at least a big part of it.

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1 J. Kobak  
2 report which we filed not long ago, we have  
3 about \$18 billion in assets. However, 1.9  
4 billion of those assets are the assets to  
5 complete the customer transaction -- customer  
6 transfer transaction with Barclays, so that  
7 would take it down to a little over 16, and then  
8 there are several hundred million, I don't have  
9 the exact figure, at least that are  
10 post-transaction principal and interest  
11 payments. So that wouldn't be the 20 billion at  
12 the time. So that would take you down to 15.5.  
13 If Barclays succeeded in the claims  
14 it's making against us under its interpretations  
15 of the clarification letter, I think you'd be  
16 down to something like, depending on how you  
17 value some of those assets and what's involved,  
18 something like 12 or 13 billion dollars, which  
19 is significantly lower than \$20 billion, and  
20 could put us at risk of a shortfall to  
21 customers.  
22 Q. Why was -- if the trustee was willing  
23 to accept the 1.9 billion that would be  
24 transferred to Barclays, was there an absolute  
25 limit on the amount that the trustee was willing

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1 J. Kobak  
2 to transfer?  
3 A. I think the way we saw it was I think  
4 that one reason, and I'm no expert in this, but  
5 our understanding was one reason there are  
6 haircuts and repos is that you might not, even  
7 when stuff was marked to market and stuff, you  
8 might not always realize 100 percent on the  
9 security values. There are costs associated  
10 with that and so forth. So there's always  
11 supposed to be a cushion.  
12 So I think our understanding was that  
13 these could be, to the extent you're talking  
14 about repo-type assets, things that were  
15 basically in balance with one another. I think  
16 if you took the 1.9 even as a figure and set  
17 against that some of the obligations, we knew  
18 that Barclays was assuming, or was saying it was  
19 assuming, like the employee severance, Barclays  
20 was either getting the assets for nothing beyond  
21 the \$250 million or possibly even risking a  
22 loss, but certainly wasn't making any windfall  
23 profit.  
24 And that would leave enough or we  
25 thought that would leave enough behind to, you

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1 J. Kobak  
2 significant shortfall.  
3 I believe there were discussions over  
4 the weekend when the 15c3 account was an issue  
5 where it was believed, and of course, a lot of  
6 this comes from the Barclays and LBI people, but  
7 it was believed that there was actually a  
8 surplus in that account. I mean, that's why the  
9 769 million can even get into the agreement even  
10 on a contingent basis. If people thought there  
11 were shortfall, I don't think that would have  
12 been the case.  
13 Q. You mentioned something about these  
14 other liabilities of cure and comp that you  
15 understood Barclays was assuming, correct?  
16 A. Yes.  
17 Q. And let me make sure I understand this  
18 correctly. The liabilities of cure and comp  
19 would be a cost to Barclays?  
20 A. Yes.  
21 Q. Correct? They may be of some  
22 benefit -- the cure liability that Barclays  
23 assumed would be of some benefit to the estate  
24 because there would be that much less in  
25 liability claimants, correct?

1 J. Kobak  
2 know, reasonably comfortably take care of  
3 customers.  
4 Q. There was no way you could know that,  
5 even if all of the numbers you were given were  
6 correct, there was no way you could know that at  
7 the time, correct?  
8 A. No.  
9 MR. MAGUIRE: Know what at the time?  
10 Q. There was no way you could know at the  
11 time of the sale transaction whether the amount  
12 of money left in the LBI estate was going to be  
13 enough to satisfy all remaining customer claims?  
14 MR. MAGUIRE: Objection to form.  
15 A. No, but we were led to understand that  
16 that would be the case, and we didn't see  
17 anything that suggested it wouldn't be the case.  
18 Q. How were you led -- who led you to  
19 believe that would be the case?  
20 A. We had some discussions and SIPC  
21 particularly had some discussions I believe with  
22 the S.E.C. and other regulators about the status  
23 of the accounts and what was in segregation and  
24 so forth, and basically I believe was led to  
25 believe that there probably would not be a

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1 J. Kobak  
2 A. That's correct.  
3 Q. But those liability claimants would be  
4 general creditors who would come after  
5 customers, correct?  
6 A. Well, technically, the way SIPC works  
7 is there's customer property and then there's  
8 general estate property. A lot of property gets  
9 allocated to customer property, and that's used  
10 to satisfy customers, and only if there's an  
11 excess does that get added to the general  
12 estate.  
13 It's not really -- I mean,  
14 colloquially it's a priority. It's really two  
15 different pots of assets.  
16 Q. Okay. My technical formulation may be  
17 wrong, but as a practical matter, any  
18 outstanding trade payable to a contracting  
19 service provider to Lehman would only get paid  
20 their claim after all customers had received  
21 full amount of their customer prompt?  
22 A. No, there could be a general -- you  
23 could have a situation where there's not  
24 sufficient assets to pay customers. There's  
25 still some money in the general estate and you

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1 J. Kobak  
2 questions that were asked and that led to the  
3 2004 request, and I think that's basically,  
4 that -- those proceedings are basically the  
5 answer to the question.  
6 Q. When did the trustee first communicate  
7 to Barclays that the trustee believed Barclays  
8 may have received assets in the deal in excess  
9 of the \$47.4 billion cap?  
10 MR. CARDEN: Objection to form.  
11 A. I don't know. I don't know if we  
12 communicated that during the 2004. I kind of  
13 turned that over to a team of litigators who  
14 kept me generally apprized of kind of what was  
15 happening, but not necessarily on a  
16 detail-by-detail basis.  
17 Q. Was the trustee aware that in February  
18 2009 Barclays published the acquisition balance  
19 sheet for the Lehman acquisition?  
20 A. I remember hearing and maybe seeing  
21 the accounting statements that they did that  
22 showed a substantial gain on the transaction,  
23 which was quite a surprise to us.  
24 Q. Did the acquisition balance sheet --  
25 do you recall whether the trustee was aware that

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1 J. Kobak  
2 So, and I cannot be any more specific  
3 than that. I just think that some remark like  
4 that was made during such a meeting.  
5 Q. I remember that meeting, and I can  
6 tell you I don't remember that statement, but  
7 that's fine.  
8 A. Well, it may -- we've had other --  
9 Q. Since you brought the meeting up, I  
10 have a question.  
11 A. We've had --  
12 Q. I have a --  
13 A. We've had other meetings with Mr.  
14 Hughes and others, and so it may have been in  
15 some other meeting or even phone call that  
16 occurred.  
17 Q. At the meeting you reference on June  
18 12 where we met to discuss Barclays claims, am I  
19 correct in saying that no one from the trustee's  
20 side of the table said anything about there  
21 being a \$47.4 valuation cap in the deal?  
22 MR. CARDEN: Objection to form.  
23 A. I don't recall that subject coming up.  
24 (Exhibit 445, Barclays PLC and  
25 Barclays Bank PLC Form 6-K, marked for

1 J. Kobak  
2 the acquisition balance sheet showed an  
3 acquisition of assets, a total value of assets  
4 over \$47.4 billions?  
5 A. I don't recall. I recall a footnote  
6 that showed a, if I'm thinking of the same  
7 financial statement, that showed a profit of  
8 something in the area of 2.2 to 2.3 billion  
9 British pounds, which would be about \$4 billion,  
10 I think, U.S., give or take, which seemed quite  
11 inconsistent with the kind of deal that had been  
12 described and that we understood to be involved.  
13 Q. Did you notify Barclays of that?  
14 A. I don't know, other than that I recall  
15 in one meeting with Jonathan Hughes and others,  
16 you yourself might have been there, when we were  
17 discussing some of Barclays' claims and our  
18 reactions to them that I believe somebody on our  
19 side, Mr. Maguire or the trustee himself or me  
20 or somebody, I believe said that, you know, we  
21 did not expect that Barclays would make a huge  
22 profit on the transaction and we certainly  
23 didn't think that if they made a big huge profit  
24 on the transaction, they should also be seeking  
25 yet more assets from us.

1 J. Kobak  
2 identification, as of this date.)  
3 Q. Mr. Kobak, in front of you is Exhibit  
4 445, which is an excerpt from Barclays' Form  
5 6-K, S.E.C. filing from February 9, 2009. It  
6 lists the acquisition balance sheet in the first  
7 column on the second page of the attachment,  
8 which is page 38 of the 6-K.  
9 A. Uh-huh.  
10 Q. Do you see that?  
11 A. Yes.  
12 Q. And it is listed in British pounds.  
13 Do you understand that? It says "pounds,  
14 millions" at the top of that column, do you see  
15 that?  
16 A. Uh-huh. Yes, I do.  
17 Q. When this was published, did the  
18 trustee review it, or his advisors?  
19 A. We looked at it and the profit that  
20 was reported, yes.  
21 Q. And you thought the profit was bigger  
22 than you thought -- expected it to be, correct?  
23 You mentioned that?  
24 A. We didn't really expect there would be  
25 any profit or any profit of any size, yes.

| Page 214                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | Page 215                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1 J. Kobak</p> <p>2 Q. Did you think the total assets listed</p> <p>3 were in excess of what you thought was</p> <p>4 authorized? Do you recall whether the trustee</p> <p>5 at that time thought that the assets, the total</p> <p>6 valuation of the assets was in excess of what</p> <p>7 was authorized?</p> <p>8 MR. DAKIS: Objection to form.</p> <p>9 A. I don't know to what extent we looked</p> <p>10 at that.</p> <p>11 MR. HUME: I want to mark quickly as</p> <p>12 an exhibit the transcript from the Barclays</p> <p>13 teleconference with investors.</p> <p>14 Q. As I understand it, the September 17</p> <p>15 teleconference Barclays held with its investors,</p> <p>16 you don't know whether the trustee was aware of</p> <p>17 that?</p> <p>18 A. I don't know if the trustee was aware</p> <p>19 of it.</p> <p>20 Q. Was the trustee aware that certain</p> <p>21 creditors were complaining at the sale hearing</p> <p>22 that Barclays was getting a discount and a fire</p> <p>23 sale deal?</p> <p>24 A. I believe people were complaining</p> <p>25 about a fire sale deal. I'm not a hundred</p>                                                  | <p>1 J. Kobak</p> <p>2 percent sure that -- I don't recall necessarily</p> <p>3 discussion of a discount in that connection.</p> <p>4 Q. Well, it's in the sale hearing</p> <p>5 transcript, but we won't belabor it.</p> <p>6 MR. MAGUIRE: Would you care to give</p> <p>7 us a reference?</p> <p>8 MR. HUME: Sure. I'll give it to you</p> <p>9 off the record and you'll see in it our</p> <p>10 brief.</p> <p>11 We'll mark the next exhibit.</p> <p>12 Actually, we don't need to mark it. Exhibit</p> <p>13 24. It's already been marked.</p> <p>14 MR. MAGUIRE: You mentioned the -- the</p> <p>15 teleconference transcript. Are you marking</p> <p>16 that?</p> <p>17 MR. HUME: I'm waiting to get it.</p> <p>18 Q. Just so we do close the loop on the</p> <p>19 discount point, if you wish, Mr. Giddens, if you</p> <p>20 go back to the sale hearing transcript, big</p> <p>21 document there in front of you.</p> <p>22 MR. MAGUIRE: Mr. Kobak.</p> <p>23 A. I'm Mr. Kobak.</p> <p>24 Q. Sorry, Mr. Kobak.</p> <p>25 If you look at page 174 of the</p>                                                                                                                                                                           |
| Page 216                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | Page 217                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <p>1 J. Kobak</p> <p>2 document.</p> <p>3 A. Okay.</p> <p>4 Q. There's an objection being registered</p> <p>5 by a Mr. Daniel Golden, who represented</p> <p>6 creditors, bondholders, I believe, and at the</p> <p>7 end of the paragraph on page 174, Mr. Golden</p> <p>8 says, "Nobody ever suggested maybe there's an</p> <p>9 alternative here that is something less than</p> <p>10 selling assets on what we perceived to be a</p> <p>11 discount value." Do you see that?</p> <p>12 A. Yes.</p> <p>13 MR. MAGUIRE: I'm sorry, which line?</p> <p>14 MR. HUME: Line 6 through 8. I'm</p> <p>15 sorry. I should have given that.</p> <p>16 Q. So does seeing that refresh your</p> <p>17 recollection that there were complaints about</p> <p>18 possible discount in the deal?</p> <p>19 MR. CARDEN: Objection to form.</p> <p>20 A. There were complaints that Barclays</p> <p>21 was basically getting something for nothing, a</p> <p>22 very valuable and substantial number of customer</p> <p>23 accounts, among other things, and substantially</p> <p>24 paying nothing for that other than a nominal</p> <p>25 \$250 million for goodwill, so that that was the</p> | <p>1 J. Kobak</p> <p>2 spirit in which I took that comment, not the</p> <p>3 discount the way we have discussed it earlier.</p> <p>4 Q. Notwithstanding that, the trustee</p> <p>5 still believed that the sale should be approved,</p> <p>6 correct?</p> <p>7 MR. CARDEN: Objection to form.</p> <p>8 A. Again, the trustee was looking at what</p> <p>9 would be -- what he thought would be their for</p> <p>10 customers, the protection for customers, the</p> <p>11 need to protect customers, the fact that SIPC,</p> <p>12 the S.E.C., the Federal Reserve, everyone else</p> <p>13 wanted to protect customers, and that's the role</p> <p>14 of the SIPA trustee. So that was our primary</p> <p>15 concern with the transaction, as I think we</p> <p>16 explained during the hearing.</p> <p>17 Q. And the customers were protected? The</p> <p>18 PIM customer were protected, correct?</p> <p>19 A. They have been protected.</p> <p>20 Q. The PAM customers have been protected</p> <p>21 by going to Neuberger?</p> <p>22 A. Yes, that's correct. There's some</p> <p>23 customers that Barclays didn't take. We're</p> <p>24 protecting them as well as we can. There's some</p> <p>25 prime brokers that I thought in the</p> |



1 J. Kobak  
2 liquidating other securities?  
3 A. They liquidated billions and billions  
4 of dollars of securities. Their wind-down  
5 process I don't believe is completed yet.  
6 Q. Do you know what the ultimate  
7 settlement obligations were that were guaranteed  
8 by this DTC letter agreement?  
9 A. In terms of dollar amount or --  
10 Q. Yes.  
11 A. No, not off the -- no, I don't recall.  
12 Q. Do you know if it was more or less  
13 than 250 million?  
14 A. I thought it was a very substantial  
15 amount. There were many other liabilities that,  
16 according to -- and obligations according to DTC  
17 that the estate was potentially liable for that  
18 they would look to, and that's why it's my  
19 understanding they wanted anything that they  
20 could get a hold of in addition to this \$250  
21 million for the Barclays guarantee to make sure  
22 that they and their members were protected.  
23 Q. Just so I'm clear, I'm not asking what  
24 the potential exposure was. I'm asking what --  
25 do you know today what the ultimate actual

1 J. Kobak  
2 settlement obligations were that the DTCC had to  
3 absorb after the Lehman liquidation began that  
4 was being secured by this DTC letter?  
5 A. No, I don't. We're in the process of  
6 trying to do a full reconciliation of accounts  
7 and so forth with DTC.  
8 Q. Now, do you recall that the  
9 clarification letter was explicitly amended to  
10 reflect the amendment made by the DTC letter to  
11 the deal as it was in the First Amendment to the  
12 APA?  
13 MR. DAKIS: Objection to form.  
14 MR. MAGUIRE: Can you repeat that  
15 question?  
16 Q. Why don't we do it this way. Can you  
17 find and put in front of you yourself the  
18 clarification letter, Exhibit 25?  
19 A. I'm having trouble putting my hands on  
20 my copy of 25.  
21 Q. I'm sure we have another one.  
22 A. I'm sorry. It was under something.  
23 I'm sorry.  
24 Q. If you to turn to page 3 of the  
25 clarification letter, you'll see subsection 1(d)

1 J. Kobak  
2 of the agreement?  
3 MR. MAGUIRE: 1(d)?  
4 Q. 1(d) toward the top of the page, do  
5 you see that provision?  
6 A. Yes.  
7 Q. Says, "Sections 3 and 4 of the First  
8 Amendment are hereby deleted in their entirety  
9 and shall be of no effect ab initio. LBI hereby  
10 instructs purchaser to pay at the closing \$250  
11 million of the cash amount to the Depository  
12 Trust Clearing Corporation for deposit as  
13 collateral against LBI's obligations to DTC.  
14 Such" -- it then says, "Such collateral account  
15 shall be maintained in accordance with the  
16 agreement among LBI, Purchaser and DTC entered  
17 into in connection with the closing."  
18 Do you see that language?  
19 A. Yes.  
20 Q. Would you agree with me that that  
21 language in the clarification letter reflects  
22 the agreement made in the DTC letter?  
23 A. Well, it refers to that letter. This  
24 is only in part what the agreement covered, the  
25 agreement, the tri-party agreement between LBI,

1 J. Kobak  
2 the purchaser and DTC.  
3 Q. I understand that's your position, but  
4 what I want to make sure we agree on is that the  
5 clarification letter was amended to reflect the  
6 agreement reached in the DTC letter agreement?  
7 A. Yes. I mean, it was understood that  
8 there would be an agreement with the DTC between  
9 the three parties referenced here.  
10 Q. Now, if you turn to the first page of  
11 the clarification letter and we go back to the  
12 provision we were looking at before, Section  
13 1(A), Romanette ii, Subsection (B) of that  
14 paragraph provides that purchased assets shall  
15 include "such securities and other assets held  
16 in LBI's clearance boxes as of the time of the  
17 closing." Do you see that language?  
18 A. Yes.  
19 Q. And do you agree with me that that  
20 language was not amended to reflect the  
21 agreement set forth in the DTC letter agreement?  
22 MR. MAGUIRE: Objection to form.  
23 A. I believe there was an earlier draft  
24 of the clarification letter that specifically  
25 referred to DTC clearing boxes, and the specific

1 J. Kobak  
2 reference to DTC clearing boxes or to DTC was  
3 removed from the agreement before this language  
4 appeared.

5 Q. We can show you that draft, but are  
6 you saying that this provision should have been  
7 written the way it's written? As it's written,  
8 it does not -- let me withdraw and ask a clear  
9 question.

10 There's nothing in this provision  
11 relating to clearance box securities, is there,  
12 that carves out or excludes clearance box  
13 securities at the DTC account?

14 MR. MAGUIRE: Objection to form.

15 Q. Would you agree with that?

16 A. There's nothing that either  
17 specifically includes them or specifically  
18 excludes them --

19 Q. Well --

20 A. -- in this agreement.

21 Q. -- there are securities -- there were  
22 securities at that time in LBI's clearance boxes  
23 at the DTC, correct?

24 A. I believe so, yes.

25 Q. And this language does not exclude

1 J. Kobak  
2 those securities?

3 A. Not specifically, no.

4 Q. Does the trustee think that this  
5 should have been written differently to exclude,  
6 explicitly exclude, the DTC securities?

7 MR. MAGUIRE: Objection to form.

8 Q. The DTC clearance box securities?

9 A. The trustee feels that there is a  
10 clear agreement with DTC and with Barclays which  
11 Barclays needed to sign in order to have the  
12 account transfers take place which specifies  
13 that the clearance boxes remain property of the  
14 trustee, as we've previously discussed.

15 Q. Before the closing, Mr. Kobak, did  
16 anyone for the trustee ever tell Barclays that  
17 the trustee believed that the DTC letter removed  
18 the clearing box assets from the deal?

19 MR. CARDEN: Objection to form.

20 A. I don't know if anyone specifically  
21 discussed that with Barclays, but it was our  
22 clear understanding and I believe the DTC's  
23 understanding as well.

24 Q. But you don't know whether that  
25 understanding was ever communicated to Barclays?

1 J. Kobak  
2 A. I don't recall it being communicated  
3 one way or the other to Barclays.

4 Q. And other than -- you told me about a  
5 conversation with the DTC earlier before the  
6 lunch break.

7 Other than those communications, did  
8 the trustee communicate its understanding about  
9 the DTC clearing box assets to anyone else  
10 before the closing?

11 A. I don't clearly remember. I may have  
12 discussed it with Mr. Caputo of SIPC.

13 Q. Other than Mr. Caputo at SIPC, for  
14 example, does the trustee have any recollection  
15 of telling anyone its understanding about the  
16 clearance box securities and the DTC letter at  
17 Weil Gotshal before the closing?

18 A. Before the closing I don't recall any  
19 such discussion. I just don't recall either  
20 way.

21 Q. Is there any recollection of any such  
22 discussion with anyone employed by Lehman?

23 A. No, I don't recall. Again, I don't  
24 recall either way.

25 Q. Did anyone, during the negotiations

1 J. Kobak  
2 and before the closing, did anyone ever  
3 explicitly communicate to the trustee that the  
4 DTC letter agreement removed the DTC clearance  
5 box assets from the sale?

6 MR. MAGUIRE: Other than in the letter  
7 itself?

8 A. Well, the letter itself clearly says  
9 that to me, and I believe that was the substance  
10 of my discussions with the representatives of  
11 the DTC, that rather than what they would have  
12 preferred to have happened, as I understood it,  
13 was that Barclays would assume the accounts and  
14 the liabilities in their entirety, that the  
15 whole 74 box, which I think is what we were  
16 talking about, would be transferred to Barclays  
17 given whatever the Barclays number is and become  
18 the Barclays box, but that since Barclays would  
19 not assume liabilities, DTC felt itself exposed  
20 and, therefore, it wanted to be sure that the  
21 boxes stayed with the trustee.

22 And that was the background for the  
23 agreement, as I understood it, and I did have  
24 discussions of that with DTC and I believe I  
25 also mentioned it briefly to Mr. Caputo at some

J. Kobak

point, perhaps during the court proceedings or over the weekend.

Q. And the discussions you had with the DTC lawyers and representatives you believe were late Friday and early Saturday morning?

MR. MAGUIRE: Objection to form.

A. I believe we had some discussion in court and further discussion I think maybe very early Monday morning around the time of the execution of the DTC letter, as I recall.

Q. After reviewing the clarification letter, the final clarification letter, did the trustee or any of his advisors bring to anyone's attention that the clearance box provision in the clarification letter does not specifically exclude clearance box assets at the DTC accounts?

A. No, I don't believe we discussed that one way or the other.

Q. So until Barclays raised the issue by demanding delivery of those clearance box assets, you don't know of any time where the trustee raised the issue with anyone else?

A. I don't believe that we reached that

J. Kobak

issue in terms of discussing it. As I say, we were not very actively involved in the negotiations. Essentially this is the deal that had been done by the holding company and by Weil that we were asked to approve for purposes of our proceeding, and that was still essentially our role in it.

Q. Can you tell me what meaning the trustee ascribes, if any, to the phrase in paragraph 1(A), two little ii, "Such securities and other assets held in LBI's clearance box as of the time of the closing"?

A. I think the trustee would ascribe the normal English language meaning of those words.

Q. Okay. You're content to live with the normal English reading of those words?

A. Yeah, but I think you have to interpret this in terms of the context, and the context, if it didn't include then, certainly a short time thereafter did include what's now Exhibit 52, the DTC letter, which is dated as of September 22, actually a date or two after the "as of" date of the clarification letter.

Q. In your letter --

J. Kobak

A. So, in a sense, whatever the words were, there was a specific agreement between all three of the parties involved very specifically dealing with the clearing boxes at DTC which clearly said, in our view, and I believe in DTC's views, that these are specifically excluded assets from the clarification letter in the Asset Purchase Agreement.

Q. You agree that the clarification letter and the DTC letter were executed simultaneously, correct?

A. I believe roughly simultaneously.

Q. And do you recall making the argument to Barclays in one of your letters that the DTC letter should control the clarification letter because it was executed two days later?

A. I believe I made that point. I think I also made the point that I've just made that this was a very specific agreement about a very specific subject for a very specific purpose between all three parties that were involved.

Q. Do you agree that the first point about the DTC letter being executed and agreed to later than the clarification letter was

J. Kobak

incorrect?

A. No.

MR. MAGUIRE: You're talking now about executed versus dated?

Q. Executed. Agreed to, finalized and executed?

A. Can you --

Q. I just want a confirmation on the record. Your affidavit says the clarification letter was executed in the early morning hours of September 22?

A. Yeah, I've never disputed that. I think the point I meant to make to Barclays, and I realize you dispute this as a legal matter, and I don't think today is the time to, you know, argue our legal disputes rather than our factual understandings, but I think there's some significance to the fact that dates -- "as of" dates were chosen for this agreement and the more specific agreement which specifically deals with the subject we're talking about is also the one that bears the later date.

Q. Following the closing -- this is a complete filing of something or a filing with

1 J. Kobak  
2 one of its attachments that was made in court.  
3 It should be clipped together and labeled as the  
4 next exhibit, please.

5 (Exhibit 446, Joint Motion of the  
6 Debtors and Barclays Capital, Inc. for Entry  
7 of an Order Authorizing to File Under Seal  
8 Certain Schedules to the Asset Purchase  
9 Agreement, marked for identification, as of  
10 this date.)

11 Q. Mr. Kobak, on September 30, eight days  
12 after the closing, Weil Gotshal, acting for the  
13 Debtor, and Cleary Gottlieb, acting for  
14 Barclays, filed a motion, a joint motion, to  
15 file two schedules to the clarification letter.  
16 That motion has been marked as the next exhibit,  
17 which is number 446?

18 A. I see this. I see it, yes, and I have  
19 it in front of me.

20 Q. And at the time that this was filed, I  
21 assume it was served on the trustee, do you  
22 recall?

23 A. We get served with an awful lot of  
24 papers. I don't specifically recall.

25 Q. Were you aware of this filing?

1 J. Kobak  
2 A. I knew there was a filing of certain  
3 schedules -- I believe I knew there was a filing  
4 of certain schedules to the Asset Purchase  
5 Agreement and that Barclays wanted the filing to  
6 be made under seal.

7 Q. Did you get the under-seal exhibit  
8 list of the securities that were filed? Did you  
9 receive that?

10 A. I don't know if I ever received it  
11 personally, but again, some representative of  
12 the trustee did, I'm sure.

13 Q. And you understood that this was  
14 filing Schedules A and B referenced in the  
15 clarification letter?

16 A. Yes, I do.

17 Q. And you understood Schedule A was the  
18 repo collateral?

19 A. Yes, basically.

20 Q. And Schedule B were the clearance box  
21 assets?

22 A. Well, that's what -- I believe that's  
23 the schedule that's referred to in Exhibit 25,  
24 so yes.

25 Q. Did the trustee -- did the trustee

1 J. Kobak  
2 make any effort in response to this filing to  
3 determine whether the Schedule B assets were in  
4 the DTC clearance boxes?

5 A. I think at a later time -- I don't  
6 think this is what you're really asking me, but  
7 it's responsive to your question. I think at a  
8 later time during our discussions at Barclays we  
9 had Deloitte do an examination of what Barclays  
10 was claiming and what was really in the -- in  
11 the clearance boxes as compared to the list and  
12 so forth. But as the time, the answer is I  
13 don't believe so.

14 Q. Did the trustee object in any way to  
15 the fact that there were all these clearance box  
16 assets being described as assets transferred  
17 under the agreement, many of which were found in  
18 the clearance boxes at the DTC?

19 A. No, because it didn't really alter our  
20 understanding or our position, which is that the  
21 DTC letter is controlling.

22 Q. So, just so I understand, at the time  
23 this was filed, were you aware of the fact that  
24 there was a schedule with clearance box assets  
25 that included assets in the DTC clearance boxes?

1 J. Kobak  
2 A. I'm not sure we particularly focused  
3 on it, to tell you the truth, because I don't  
4 think we thought it was particularly relevant.

5 Q. You didn't think it was relevant what  
6 the schedule of assets were that were being  
7 transferred to Barclays, billions of dollars of  
8 assets?

9 A. Schedule A we certainly thought was  
10 significant. That doesn't mean that I spent a  
11 lot of time, you know, looking at each Cusip  
12 number on Schedule A or B, or paying that much  
13 attention to it at the time, because I would --  
14 it would be meaningless to me in terms of value  
15 or whether it actually was in the boxes or  
16 anything else. And I think our understanding  
17 was that what was in the clearance boxes was  
18 ours under the DTC agreement.

19 Q. Then why would Schedule B even be  
20 filed?

21 A. It was referred to in the agreement  
22 and it was Barclays that wanted to file these  
23 things and file them under seal. I don't think  
24 we paid particular attention to it, to tell you  
25 the truth.



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J. Kobak

Q. So you understood Barclays to be filing something that Barclays thought it would receive under the transaction that you didn't think they would receive under the transaction?

A. I don't know --

MR. MAGUIRE: Objection to form.

Misstates the testimony.

Q. Is that accurate?

A. I don't know what Barclays thought.

Q. Well, wait a minute. Yes, you do. The agreement itself specifically refers to these assets as assets transferred under the agreement?

A. I know what the agreement -- if you'd let me answer my question. I don't know how you can know what I thought at the time, even if it's not perhaps what you think I should have thought.

Q. Let me show you -- I didn't mean --

A. Can I finish my answer?

I don't know what position Barclays was taking. There was a lot of suspicion voiced at the time of the hearing about the assets that were involved. Barclays, as I recall, committed

J. Kobak

to file something. There was a certain amount of suspicion about why it had to file things under seal, but I think the court understood that there were a lot of securities positions that you might not want to get out in the public eye.

And there was a reference to a Schedule B. I think to complete the filing in good order, Barclays may have decided to file Schedule B as well as Schedule A. Perhaps it was going to take the position that, after all, they were going to make some claim on these boxes, but we felt very clearly, and we still feel, that they're basically ours under Exhibit 52, which we believe is the controlling document.

Q. Mr. Kobak, there's no "perhaps" about it and it wasn't just Barclays. Let me just refer to you page 3 of the motion. This was filed by Weil Gotshal with Cleary. Page 3, the last sentence at the bottom of the page, the last complete sentence says, "As more fully described in the Clarifying Letter, the Schedules contain lists of securities and

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trading positions transferred under the Purchase Agreement."

Was it clear to the trustee at the time this was filed that Weil Gotshal, representing the debtor, as well as Barclays, represented by Cleary, understood the Schedule B assets filed in court were to be transferred to Barclays?

A. No. I mean, I know that's what these pages say, but that -- we didn't have an understanding to that effect at all.

Q. Well, how could you have understood it any other way?

A. We didn't understand that these assets were going to be Barclays' assets. We did understand that they were still referred to in the clarification letter.

Q. Did you tell anyone at the time this was filed that it was a mistake?

A. No.

Q. Before this was filed, was the trustee consulted in any way about this filing?

A. I believe we understood, and it may have been from things that Lindsee Granfield

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said in court, that there were going to be schedules filed and Barclays, as always, was going to seek to have them filed under seal.

Q. Prior to the September 30 filing of Schedule A and B, did the trustee consult in any way with Weil Gotshal about the filing of those two schedules?

A. Not that I recall.

Q. And prior to the filing on September 30, did the trustee consult in any way with Barclays about the filing of those two schedules?

A. Other than that we might have had some discussion that they were going to be filed and Barclays was going to seek to file them under seal, no.

Q. Do you recall whether the trustee communicated to anyone prior to the filing of the September 30 schedule, between the closing and September 30, did the trustee communicate to anyone that it didn't believe the Schedule B securities were included in the deal?

A. In that time period, I don't believe so.

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1 J. Kobak  
2 whether they agreed with your interpretation  
3 about the clearance box provision in the  
4 clarification letter?

5 A. I might have had some discussion with  
6 Rod Miller about that. Other than that, I don't  
7 recall.

8 Q. Did anyone from Weil Gotshal ever  
9 confirm your understanding that the DTC  
10 clearance box assets were not included in the  
11 transaction?

12 A. I don't recall. I very vaguely have a  
13 recollection of calling Rod Miller, who we were  
14 dealing with on some other things at that point,  
15 and I think he maybe said it really wasn't my  
16 department or I'm not sure or whatever. And  
17 other than that, I don't recall specifically any  
18 other conversation.

19 (Exhibit 450, a document bearing Bates  
20 Nos. HHR\_00009562 through 9566 with  
21 attachment, marked for identification, as of  
22 this date.)

23 Q. Mr. Kobak, Exhibit 450 is an e-mail  
24 exchange between you and Rod Miller.

25 A. Uh-huh.

1 J. Kobak

2 Q. You are forwarding to him a letter you  
3 received from Cleary Gottlieb, which is attached  
4 to the e-mail.

5 A. Correct.

6 Q. You say in your e-mail to Rod Miller,  
7 which is dated December 30, 2008, in the middle  
8 of the page, you say, "This is the letter which  
9 I called -- about which I called earlier." You  
10 then go on to say, "Among other things, we think  
11 the agreement with DTCC and Barclays gave us the  
12 contents of the accounts back, but we would  
13 appreciate Weil's views and recollections." Do  
14 you see that?

15 A. Yes.

16 Q. Did you ever get a substantive  
17 response from Weil Gotshal to that inquiry?

18 A. I got the response that you see here,  
19 which is, "I will look back -- take a look as  
20 soon as possible and get back to you." I don't  
21 believe he did get back to me. Frankly, it  
22 wasn't that unusual, with all deference to their  
23 lawyers, that sometimes Weil didn't get back to  
24 us because I'm sure they had a million things on  
25 their plate. I think I recall having a

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1 J. Kobak  
2 discussion with Rod where he basically said he  
3 wasn't sure that this was really his department,  
4 he wasn't sure who was involved, he didn't -- I  
5 thought he said he didn't disagree with our  
6 interpretation, but I don't think he had a clear  
7 recollection of having been involved one way or  
8 the other.

9 Q. You think you recall that?

10 MR. MAGUIRE: Objection to form.  
11 Is there a question?

12 Q. The question is you either do or you  
13 don't. I mean, do you have a clear recollection  
14 of a conversation?

15 A. I don't -- I guess what I should have  
16 said is I don't have a clear recollection. I do  
17 have a very vague recollection of some follow-up  
18 call where Rod Miller disclaimed particularized  
19 knowledge of this but, as far as I can see,  
20 didn't agree -- disagree with our position;  
21 seemed to indicate that he did agree with it.

22 Q. Can you look back at the Rule 60  
23 brief? Do you have that?

24 A. This is 443?

25 MR. MAGUIRE: Yes, Exhibit 443.

1 J. Kobak

2 Q. Can you look at paragraph 4 again  
3 where it references the amount of clearance box  
4 assets that you say we received or are claiming?  
5 In the first bullet point there under 4, you  
6 say, "Approximately \$2.4 billion in assets that  
7 were in LBI's clearance boxes." Do you see  
8 that?

9 A. Yes.

10 Q. "Including approximately 1.6 billion  
11 that has been wrongfully transferred to  
12 Barclays," do you see that?

13 A. Yes.

14 Q. Has the trustee performed a valuation  
15 of the clearance box assets referenced in that  
16 paragraph?

17 A. The ones that have been transferred  
18 or --

19 Q. Both. Either one.

20 A. Let me start with the 800 that  
21 remains.

22 Q. Uh-huh.

23 A. I believe we've asked Deloitte to take  
24 a look and give us some idea of the value. I  
25 believe, beyond a fairly general range of the

1 J. Kobak  
2 million to it, I think we would have a problem  
3 with that. Whether it means they would get this  
4 769 million and we would get something else, I  
5 don't know how that would get sorted out.

6 Q. And is that your view of what the  
7 contract means or is that just that the contract  
8 must be trumped by that?

9 MR. DAKIS: Objection to form.

10 MR. MAGUIRE: Yeah, if you could just  
11 explain what you mean.

12 MR. HUME: Forget it. It doesn't  
13 matter.

14 Q. Did the trustee ever communicate to  
15 Barclays that, before the closing -- did the  
16 trustee ever communicate to Barclays before the  
17 closing that Barclays would receive the \$769  
18 million of securities referenced in paragraph 8  
19 of the clarification letter only after all  
20 customer claims were fully satisfied in the SIPA  
21 liquidation?

22 A. I don't know. I know there was some  
23 discussion of this. There was something that  
24 was of particular concern to us. It came up in  
25 the clarification letter, as I recall, in

1 J. Kobak  
2 connection with paragraph 8, which deals with  
3 transfer of customer accounts, not the paragraph  
4 that deals with the definition of "purchased  
5 assets" and "excluded assets" and so forth, and  
6 I think in our view it was always tied in with  
7 the question of what accounts were going to be  
8 transferred to Barclays, what property might be  
9 necessary either to go with those accounts or to  
10 stay behind to satisfy the accounts that were  
11 left.

12 I think there was discussion that  
13 Barclays was actually seeking more than \$769  
14 million in securities, including maybe a billion  
15 dollars in cash, which was inconsistent with  
16 representations that were also made that there  
17 be no cash going over in the deal, and  
18 furthermore, that seemed very unfair to us  
19 because it wasn't as if Barclays was getting all  
20 the customer accounts that the 15c3 accounts  
21 were associated with, it was only getting some  
22 of them. Some of them were going to Neuberger  
23 Berman. Some of them were staying behind.

24 So, in addition to the cash point, if  
25 any number was involved, 769 million was a lot

1 J. Kobak  
2 better than a number in excess of a billion  
3 dollars.  
4 We thought that -- at this time I  
5 think we believed that Barclays was also going  
6 to be taking the private brokerage accounts, so  
7 they might well have a need for this money to  
8 satisfy their liabilities to customer accounts  
9 that they were taking over. But if not, we  
10 wanted to make sure that we would have adequate  
11 money in the 15c3 account for whatever was left  
12 with us, and we understood that that was the  
13 S.E.C.'s intent as well.

14 Q. I understand your position. You don't  
15 have to recite it every time. We've got to get  
16 through the deposition. We don't have a lot  
17 more time.

18 A. Well, you asked me the question.

19 Q. Can I ask you to look at the  
20 clarification letter, please?

21 A. The reporter carefully put them in  
22 order for me and I screwed up.

23 Q. It's right there.

24 A. I got it.

25 Q. Can I ask you to turn to paragraph 8.

1 J. Kobak

2 A. Yes.

3 Q. And it says that "The purchaser shall  
4 receive," and then little Roman ii says, "to the  
5 extent permitted by applicable law, and as soon  
6 as practicable after depositing, 769 million of  
7 securities, as held by or on behalf of LBI, on  
8 the date hereof pursuant Rule 15c3 of the  
9 Securities and Exchange Act of 1934, as amended,  
10 or securities of substantially the same nature  
11 and value."

12 Can you tell me what it is that the  
13 "or" clause means?

14 A. The "or securities of substantially  
15 the same nature and value"?

16 Q. Yes.

17 A. To us that means that there might be  
18 a -- a need or desire at some point to  
19 substitute other securities for the particular  
20 ones that were -- that made up the \$769 million.

21 Q. Did the trustee know why that  
22 provision was put in there, the "or" clause?

23 A. No, but I -- well, our understanding  
24 was that we were referring to these specific  
25 securities so that cash wasn't involved. There

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J. Kobak

might -- you might have securities, I guess, that would come due and be redeemed. There might be all kinds of reasons that you would need to substitute some securities for the particular Cusips that happened to be listed or happened to be in the account at that time.

So that was our understanding of what a substitution would be and why it might be necessary.

Q. What is the applicable law that prevents the trustee from transferring securities from outside of the 15c3 account to Barclays?

MR. CARDEN: Objection to form.

MR. MAGUIRE: Same objection.

A. I don't understand that question, from outside.

MR. MAGUIRE: I think your premise --

MR. HUME: Yeah, the premise, exactly.

Q. The premise is it says that you can transfer the 769 million from the 15c3 account or securities of the same nature and value.

Would you agree that when it says "or securities of substantially the same nature and

J. Kobak

value," it's talking about securities that are not in the 15c3 reserve account?

A. No. My understanding is that those are securities that are not in the 15c3 account at the time this was written, but might be substituted for those accounts. If the whole purpose was to avoid a violation of 15c3 and to avoid a shortfall of customer property, which is what we always believed, and I think the regulators believed the purpose was, it would make no sense to say, well, you can't take this 769 but you can say 769 from somewhere else and get a shortfall that way, or put the broker out of compliance, essentially.

Q. Just so I'm very clear, when it says "or securities of substantially the same nature and value," is it your understanding that that is referring to securities that are in the Rule 15c3 or are not in the Rule 15c3 account?

MR. CARDEN: Objection to form.

A. As I just said, it refers, in our view, to a right to substitute securities when it might make sense to do that so that this provision wouldn't just apply to the particular

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securities that happen to make up the 769 million on the account.

Q. So it allows you to substitute securities that are not in the Rule 15c3 reserve account, correct?

A. And you take out the ones that are and you'd end up with 7 -- a maximum of \$769 million.

Q. So you're saying the "or" clause requires you to put 769 from outside of the account back into the account?

MR. MAGUIRE: Objection to form.

A. No, it doesn't require you to do anything. It permits substitution so that -- otherwise, this would say the only thing that can be transferred from the 15c3 account is the 769 million. If for some reason some of those securities were no longer there because they redeemed and they were now cash or it didn't make sense to hold them, you wouldn't be able to transfer them to Barclays. I don't think that's what Barclays wanted.

Q. Is the trustee's position that no assets, under any provision in the APA or the

J. Kobak

clarification, no assets may be transferred to Barclays if, at the time of the transfer, the trustee believes there may be a shortfall in property available for remaining customer claims that remain with the estate; is that the trustee's position?

A. Well, Barclays takes the position that it's --

Q. I didn't ask you Barclays' position?

MR. MAGUIRE: If you can let the witness answer.

Q. But I need an answer to my question.

A. Well, I'm giving you an answer to my question.

Barclays is taking the position these are proprietary assets that it has a right to before anyone else. If there's a shortfall and these are proprietary assets that we hold, I believe that they are no longer in the category of being proprietary assets because they would have been necessary for the broker and they would be necessary for us to make up for shortfalls in customer property.

And therefore, just because they



1 J. Kobak  
2 happen to be in a proprietary position  
3 temporarily does not mean that you cannot  
4 consider them customer property, and I don't see  
5 anything in this agreement that says, apart from  
6 this one exception for the 769 which was  
7 believed to be excess, that Barclays gets  
8 customer property other than the property that  
9 goes with the accounts that it was actually  
10 acquiring.

11 Q. During the negotiations and prior to  
12 the closing, did the trustee have any  
13 communications with Weil Gotshal about this  
14 provision relating to the 15c3 assets?

15 A. Yes, we had some discussion with -- I  
16 don't know if it was with Weil Gotshal or the  
17 Creditors Committee or both about this, about  
18 the fact that there was a huge stink, to use the  
19 vernacular, I guess, from Harvey Miller, among  
20 others, that Barclays was trying to take cash,  
21 that cash was absolutely not part of the deal,  
22 and I told you that we had our own concerns  
23 about the 15c3 account and how much would be  
24 taken out of it and what the purpose of it was.

25 Q. Did you have any communications about

1 J. Kobak  
2 was Alex Rovira -- and I don't know how to spell  
3 that, I'm sorry -- came up to me with a draft  
4 transfer assumption -- Transfer and Assumption  
5 Agreement which he asked me to look at very  
6 quickly, said that he needed to have signed,  
7 said that the OCC had great concern about their  
8 potential liability and the obligations to their  
9 members and to themselves, and would not  
10 transfer any of the accounts, including the  
11 customer accounts, unless such a document was  
12 signed.

13 Q. And so you signed the document?

14 A. Yeah, I signed the document.

15 Q. Did you sign two documents?

16 A. I believe I did, although I have  
17 reviewed some of the e-mail traffic and I know  
18 that there's one that where only the second  
19 document is signed and not the first one. And  
20 then there's another one where the first  
21 document -- I really don't remember what I did  
22 at the hearing. I know I signed at least one  
23 document. It was my intention to sign the  
24 Transfer and Assumption Agreement. That's what  
25 I was asked to do.

1 J. Kobak  
2 what would happen if there were no excess in the  
3 15c3 account? Did you have an explicit  
4 communication about what would happen under this  
5 provision if there were no excess in the 15c3  
6 reserve account?

7 A. I don't know if we had a specific  
8 conversation to that extent. I do know that, as  
9 it was reported to me, the discussion was always  
10 on the assumption that there was likely to be an  
11 excess.

12 I don't believe the regulators would  
13 ever have permitted a transaction that -- if  
14 there had been a violation of 15c3. I don't  
15 really see how the parties could have agreed to  
16 participate in such a transaction.

17 Q. At the time of the sale hearing, did  
18 you understand that all of the margin deposits  
19 associated with LBI's accounts at the Options  
20 Clearing Corporation would be transferred to  
21 Barclays?

22 MR. CARDEN: Objection to form.

23 A. I understood during the sale hearing,  
24 or during a break in the sale hearing, that a  
25 representative of the OCC whose name I believe

1 J. Kobak  
2 Q. And your understanding was that the  
3 OCC was insisting upon that because, otherwise,  
4 it was going to be exposed to settlement  
5 obligations at the open of business on Monday,  
6 correct?

7 A. Yeah, and I think what it was  
8 threatening to do was liquidate all the  
9 transactions. Whether that would have been a  
10 good thing or bad thing I don't know. It  
11 certainly was inconsistent with the goal as far  
12 as customer accounts were concerned of getting  
13 the account to the customer so the customer  
14 could make its own decision about what to do  
15 rather than being closed out.

16 And my understanding was that what was  
17 involved was essentially agreeing that if  
18 Barclays would assume the accounts and assume  
19 the liabilities and obligations associated with  
20 those accounts, all the -- the property that was  
21 necessary to secure those obligations would go  
22 with the accounts.

23 I didn't really understand that the  
24 language was asking me to do any more than that.  
25 I didn't understand that there was any

J. Kobak

substantial amount of funds in the clearing fund or in any of the margin deposits, securities or cash, that would be greatly in excess of that.

And I understood at the time that there was substantial question about what the exposure might be under those positions and that it took Barclays a couple of days, I think, to agree that it would assume the liabilities and, therefore, assign -- the agreement was revised, but I don't think in substantially material ways. It took Barclays a couple of days to sign the agreement and agree to assume those liabilities.

Q. You understood that Barclays was concerned about the risk of assuming those liabilities?

A. Yeah, I understood everybody was concerned about the risk. The OCC was concerned about it and Barclays was concerned about it.

Q. And no one knew for sure what those settlement liabilities would be, correct?

MR. MAGUIRE: Objection to form.

A. I don't --

MR. MAGUIRE: You're asking this

J. Kobak

witness for his knowledge.

Q. Did you understand that it -- did you understand that there was an unknown potential liability in assuming the settlement obligations of the OCC accounts?

MR. MAGUIRE: That he did not know?

MR. HUME: No.

Q. Did you understand that it was an unknown potential liability?

A. I -- I -- I didn't know what it was and I realized there was a substantial doubt or uncertainty of how things might transpire and what the potential liability could be.

Q. And Barclays never, to your knowledge, Barclays never agreed to take on that liability without the margin deposit?

A. I didn't have any direct discussion with Barclays. I signed this agreement and was told that Barclays was not committing to sign it and assume the liabilities, even though, in my understanding, the property to secure those liabilities, to the extent it was at OCC, would be transferred along with them.

But I did not discuss that directly

J. Kobak

with anyone at Barclays.

Q. No one, no one at Barclays ever told you that they would be willing to take on any of the derivatives accounts without the margins; is that correct?

A. No one discussed that with me one way -- one way or the other.

Q. Did you understand --

A. I know that there were versions of the agreement that talked about taking the derivatives. It didn't say anything about the margin deposits held for security, and I believe that came in at the very last draft, the execution copy of the clarification letter. I don't recall that being in earlier drafts, I don't recall it being redlined, and I don't recall it being discussed with anyone.

Q. After you saw it after the closing, did you raise any questions about it with Barclays?

A. Well, to me it wasn't that inconsistent -- it really wasn't inconsistent. In fact, it was more limited than the way Barclays reads the Transfer and Assumption

J. Kobak

Agreement.

(Exhibit 452, a collection of document bearing Bates Nos. HHR\_00006072 through 6081, marked for identification, as of this date.)

Q. You mentioned Alex Rovira as one of the lawyers for the OCC, I believe. This is an e-mail, Exhibit 452, from Mr. Rovira to you. He references -- it's to you and Jeffrey Margolin. He references seeing you at the sale hearing, and he says, "Please find attached some clean-up comments to the transfer documentation." Do you see that?

A. Yes.

Q. And he attaches the Transfer and Assumption Agreement with some word edits to it, do you see that?

A. Yes.

Q. And then behind that he attaches something called the Collateral Agreement?

A. Yes.

Q. And the second version of that has your signature, the very last page of the exhibit, do you see that?

1 J. Kobak  
2 A. Well, it's not the last page of my  
3 exhibit, but I do see where I sign.  
4 Q. The Collateral Agreement?  
5 A. The Collateral Agreement. It's not  
6 the last page of the agreement, at least in my  
7 copy.  
8 Q. It's got a Bates number 6078 are the  
9 last four digits?  
10 A. Yes.  
11 Q. Okay. The paragraph that begins "in  
12 connection with such transfer," do you see that?  
13 A. Yes.  
14 Q. It says, "LBI has assigned to Barclays  
15 all rights in securities, cash and other  
16 property, defined as collateral, pledged by LBI  
17 to the Options Clearing Corporation and held for  
18 OCC's benefit at JPMorgan Chase." Did you see  
19 that?  
20 A. Yes.  
21 Q. And was it your understanding that  
22 that's what the trustee was authorizing when you  
23 signed this?  
24 A. Yes, consistent with the overall deal  
25 that there be no cash excess that would go to

1 J. Kobak  
2 indicated in any way that there was likely to be  
3 an excess amount of cash.  
4 Q. Did you ever tell anyone that if there  
5 was excess cash in the deal in the margin  
6 deposit, then it needed to come back to the  
7 estate? I understand that's your position. I  
8 just want to know, did you ever communicate that  
9 to anyone before the closing?  
10 A. No, I don't think we had any  
11 discussion. I don't know -- no one ever told us  
12 there was a likelihood there would be  
13 substantial excess cash.  
14 Q. Do you remember getting e-mails over  
15 the weekend from the OCC trying to confirm the  
16 Transfer and Assumption Agreement?  
17 A. I remember some e-mails.  
18 Q. And do you remember e-mails  
19 specifically talking about the need to have the  
20 Transfer and Assumption Agreement finalized?  
21 A. Yes, I understood the problem was  
22 Barclays hadn't signed it.  
23 (Exhibit 453, a document bearing Bates  
24 Nos. HHR\_00006049 through 6051, marked for  
25 identification, as of this date.)

1 J. Kobak  
2 Barclays because that would be inconsistent with  
3 the no cash, and that this wouldn't make the  
4 deal so rich that it would be way beyond the  
5 parameters that we've discussed earlier.  
6 Q. Did you tell anyone, this -- when you  
7 say you signed this consistent with the idea  
8 that there would be no cash, this says cash;  
9 this says cash will be transferred to Barclays?  
10 A. Yeah, but cash would be transferred  
11 against the liabilities. What I'm saying is  
12 nobody told us there might be in excess of a  
13 billion dollars of cash or something like that  
14 that would end up at Barclays when the deal was  
15 no cash and when there was an economic parameter  
16 to the deal.  
17 Q. So, to the extent the cash was simply  
18 needed to cover the liabilities, you thought it  
19 was possible to be included in the deal; is that  
20 correct?  
21 A. Yes.  
22 Q. But to the extent cash exceeded the  
23 liabilities, you thought it should not be in the  
24 deal?  
25 A. That's correct, and nobody told us,

1 J. Kobak  
2 Q. And Barclays hadn't signed it because  
3 they were worried about the risk of the  
4 settlement?  
5 A. I'm not a hundred percent sure, but I  
6 think that's what I was told. But generally,  
7 Barclays' position, as I understood it, in this  
8 entire transaction, was that they didn't want to  
9 assume any liabilities.  
10 Q. Next exhibit is marked 453. Let me  
11 ask you to look at the bottom of the e-mail.  
12 MR. MAGUIRE: Can you share this with  
13 us?  
14 Q. This is an e-mail with a Bates number  
15 HHR00006049 on the first page, and it has two  
16 other pages. At the bottom of the first page is  
17 an e-mail from James McDaniel to a group of  
18 people, including you and the trustee Jim  
19 Giddens and Mr. Margolin at Hughes Hubbard. Do  
20 you see that?  
21 A. Yes, I do.  
22 Q. And it's also e-mailed to Mr. Caputo  
23 and Mr. Hurt at SIPC?  
24 A. Yes.  
25 Q. And it says, "To the Group," and it

1 J. Kobak  
2 says the OCC is still seeking to confirm its  
3 understanding that the LBI counts and all  
4 positions, cash and securities collateral held  
5 by OCC in respect of those accounts are intended  
6 to be transferred to Barclays and that Barclays  
7 is assuming all obligations with respect to  
8 those accounts?  
9 A. Yes.  
10 Q. Do you see that?  
11 A. Yes.  
12 Q. It then goes on to provide further  
13 description of what's in those accounts. I ask  
14 you to continue to read the e-mail and look down  
15 to the second paragraph, halfway down the second  
16 paragraph where it says the words "in addition."  
17 Do you see that sentence?  
18 A. Yes.  
19 Q. It says, "In addition, OCC is holding  
20 nearly \$1 billion in cash for the accounts of  
21 LBI." They say, "It is important that the  
22 disposition of these assets is understood and  
23 agreed to among all parties and that the  
24 documentation addresses it in a consistent way."  
25 Do you see that?

1 J. Kobak  
2 Q. In response to that did you make --  
3 A. No, I thought if the answer was --  
4 Q. Can your let me finish my question?  
5 A. I'm sorry.  
6 Q. Did you make any follow-up inquiries,  
7 or did anyone from the trustee, as to whether  
8 there was any excess margin in the OCC account?  
9 A. No, I think that -- I felt that, given  
10 what we knew about the parameters of the deal  
11 and what we understood the purpose of this to  
12 be, if someone had determined, there obviously  
13 was a question whether there would be any  
14 substantial excess or any excess at all for what  
15 this billion dollars was, if it turned out there  
16 was an excess that wouldn't be needed that was  
17 accretive to everything else Barclays was  
18 getting, it seemed to me it would be in the  
19 nature of a windfall and somebody should be  
20 coming back and telling us and telling the other  
21 parties and telling the Court about it.  
22 Q. Was there a concern at SIPC that these  
23 accounts not be liquidated by the OCC?  
24 A. I believe so. I believe our  
25 understanding was that it would be desirable at

1 J. Kobak  
2 A. Yes.  
3 Q. Do you have any knowledge of whether,  
4 in response to this e-mail, anyone from the  
5 trustee or from Hughes Hubbard or from SIPC told  
6 the OCC that they did not believe Barclays  
7 should receive that cash?  
8 A. No, I didn't understand that it was  
9 excess cash. I still understood that this was  
10 cash that was going, and the reason for it was  
11 that there might be liabilities that have to be  
12 settled up, not that there was likely to be that  
13 much of an excess.  
14 Q. And you say no one ever told you that  
15 there might be an excess. The top e-mail in  
16 this chain is a reply to this e-mail from the  
17 OCC, a reply sent by Ed Rosen, who is a lawyer  
18 at Cleary Gottlieb, representing Barclays?  
19 A. Right.  
20 Q. Correct?  
21 A. Right.  
22 Q. And it says, "Jim, can you tell us  
23 more about the \$1 billion. Is it excess  
24 margin?" Do you see that?  
25 A. Right.

1 J. Kobak  
2 all -- if at all possible, to get these accounts  
3 transferred along with the other accounts so  
4 that customers wouldn't find either that their  
5 accounts were frozen or that actions were taken  
6 in their accounts that they had no control over.  
7 (Exhibit 454, a document bearing Bates  
8 Nos. HHR\_00007387 through 7397, marked for  
9 identification, as of this date.)  
10 Q. Mr. Kobak, Exhibit 454 is a draft of  
11 the clarification letter circulated from Weil to  
12 Hughes Hubbard Sunday evening of September 21,  
13 7:54 P.M. Do you see that?  
14 A. Uh-huh. Yes.  
15 Q. And it -- the e-mail states it  
16 attaches the most recent version of the  
17 so-called clarification letter. Do you see that  
18 in the first line of the e-mail?  
19 A. Yes.  
20 Q. The attachment -- I assume you'll be  
21 familiar with this because you referenced it I  
22 think in your earlier testimony and your lawyers  
23 have referenced it in their briefs. In this  
24 draft on the second page there's a provision  
25 dealing with excluded assets, subsection D.



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1 J. Kobak  
2 would not be concerned about it if it was  
3 excess, and most of all, I was happy about that  
4 "except as permitted by law" language --  
5 Q. So --  
6 Sorry.  
7 A. -- which seemed to us to protect our  
8 position about as clearly and fully as one  
9 could.  
10 Q. And during that conversation, there  
11 was an understanding that there would be an  
12 excess to be transferred?  
13 A. Well, I think the assumption was there  
14 would be an excess, and the purport of the  
15 language was, if there weren't an excess, if  
16 there was shortfall in the account, it wouldn't  
17 be permitted by law and, therefore, it wouldn't  
18 be allowed.  
19 Q. Did anyone during that conversation or  
20 at any other time relay to you what Barclays had  
21 told them about this 15c3 issue?  
22 A. Well, I don't know, other than that I  
23 know that the over \$1 billion cash became the  
24 769 million securities and the other changes in  
25 the language that we've discussed occurred.

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1 J. Kobak  
2 Q. Do you have any recollection or does  
3 anyone working for the trustee have any  
4 recollection of focusing on that language at the  
5 time it was included in this draft?  
6 A. I -- I don't recall.  
7 Q. Was the trustee or the trustee's  
8 advisors aware of this language in any way  
9 before the closing?  
10 A. Well, I'm sure we or somebody would  
11 have seen it, certainly. So, in that sense, we  
12 were aware of it.  
13 Q. But you're not aware of any  
14 communication that the trustee had with anyone  
15 about removing or refining or revising this  
16 language?  
17 A. Well, we did have specific agreements  
18 with DTC, or we were going to have one with DTC,  
19 and we had a specific agreement, or the  
20 beginning of a specific agreement with the OCC,  
21 so I think to -- to the extent we were focusing  
22 on this, we were focusing probably largely on  
23 those two things.  
24 Q. Those letter agreements?  
25 A. Yes.

1 J. Kobak  
2 Q. The changes occurred, but no one said  
3 Barclays said X or Y or Barclays represented X  
4 or Y?  
5 A. I don't remember specifically.  
6 Q. Going on in this provision that we  
7 were looking at, in terms of what is not an  
8 excluded asset, it also says, "Cash, cash  
9 equivalents, bank deposits or similar cash  
10 items." First it says in the 15c3 account, and  
11 then it says, "or by or on behalf of any  
12 clearing agency or clearing organization to  
13 collateralize, guarantee, secure," long  
14 parenthetical, "whether as margin, guaranteed  
15 fund deposit, or in any other form, the  
16 obligations of LBI or any other person in an  
17 account maintained by, or on behalf of, LBI, and  
18 for which purchasers shall become responsible as  
19 of the closing." Do you see that language?  
20 A. Uh-huh.  
21 Q. Did anyone from the trustee tell  
22 anyone involved in the drafting of the  
23 clarification letter or otherwise involved in  
24 the negotiations to remove that language?  
25 A. I don't believe so.

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1 J. Kobak  
2 Q. Let me ask you, were there any changes  
3 to the Transfer and Assumption Agreement that  
4 you recall asking the OCC to make over the  
5 weekend, "you" meaning anyone on behalf of the  
6 trustee?  
7 A. I don't think we requested any  
8 changes. I think Cleary on behalf of Barclays  
9 had a few language changes.  
10 Q. Let me switch forward. After the  
11 closing, am I correct that the trustee agreed --  
12 let me withdraw that. After the closing, am I  
13 correct that the trustee was aware that all of  
14 the margin deposit that LBI had at its OCC  
15 accounts were being transferred to Barclays'  
16 accounts?  
17 A. Yes.  
18 Q. And after the closing, did the trustee  
19 become aware that some portion of the LBI OCC  
20 margin was pledged to the OCC in the form of  
21 government securities held in an account at  
22 JPMorgan?  
23 A. At some point I think we became aware  
24 of that, yes, but I can't -- I'm having a hard  
25 time filling -- remembering exactly when in the

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1 J. Kobak  
2 sequence of events that was.  
3 Q. Are you aware that the trustee agreed  
4 to release a portion of those government  
5 securities to Barclays?  
6 A. I think I became aware of that. I'm  
7 not sure we were aware of it at the time.  
8 Q. Well, somebody must have been aware of  
9 it for it to happen?  
10 A. Well --  
11 MR. MAGUIRE: Let's wait for the  
12 question.  
13 Q. Let me just establish a few basics.  
14 You understand that there's a  
15 portfolio of government securities of  
16 approximately \$900 million value, or maybe a bit  
17 more, that was pledged to the OCC by LBI and  
18 held in accounts at JPMorgan?  
19 A. I understand that now. I'm not sure I  
20 knew at the time how much was involved.  
21 Q. You understand that a portion of  
22 that -- those securities were -- do you  
23 understand that in order for those securities to  
24 be transferred to Barclays, JPMorgan asked for  
25 the trustee's consent?

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1 J. Kobak  
2 and talking to Barclays about it, among others,  
3 we came to realize that there was potentially --  
4 there appeared to be substantial amounts of what  
5 I'll call excess in these JPMorgan accounts.  
6 Q. What do you mean by "excess"?  
7 A. I mean money that was on deposit and  
8 was in excess of the amounts that would be  
9 needed to satisfy any liabilities or  
10 obligations. So, in that sense, it's excess  
11 margin, let's call it.  
12 Q. So any amount that's over and above  
13 the amount needed to satisfy the liabilities on  
14 what day? The very first day that Barclays took  
15 over the accounts?  
16 A. Whatever -- well, I don't know that we  
17 made. I mean, I think our understanding was we  
18 found that there was a very substantial amount  
19 of money clearly in excess of what would ever be  
20 required to satisfy those liabilities, and that  
21 to us was not something we had knowingly  
22 bargained away or thought should be transferred  
23 to Barclays and it seemed, again, to be perhaps  
24 a windfall, but something accretive to what  
25 Barclays was supposed to obtain in the

1 J. Kobak  
2 A. Yes, it became -- it came to my  
3 attention after it occurred, I believe, but yes.  
4 Q. And after that consent was given and  
5 the transfer was made, at some point did the  
6 trustee form the view that it would not consent  
7 to transfer any more of those securities?  
8 A. Yes.  
9 Q. And what was the basis for that change  
10 in decision?  
11 A. Well, I think first our -- as I  
12 recall, there was a problem, and some of this  
13 was lack of visibility because we didn't always  
14 have great visibility to JPMorgan accounts, to  
15 the software that shows what's happening in  
16 accounts. I know there was a concern, which I  
17 think Deloitte first voiced, that there were  
18 customer accounts of customers that might --  
19 might or might not even be Barclays' customers,  
20 but that nevertheless had positions at OCC and  
21 we weren't clear whether Barclays was  
22 appropriately standing behind those accounts.  
23 Q. And what do you mean by -- sorry.  
24 A. And then I think in the course of  
25 investigating that and learning more about it

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1 J. Kobak  
2 agreements, which had never been explained to or  
3 authorized by the Court.  
4 Q. Do you have any, any evidence or basis  
5 at all for believing -- let me ask it in two  
6 parts: Do you believe that Barclays knew what  
7 the value was of these margin deposits and how  
8 it compared to the liabilities in the OCC  
9 accounts at the time that Barclays agreed to do  
10 the deal?  
11 MR. DAKIS: Object to form.  
12 A. I don't know. It might well not have,  
13 but I don't know. I don't know whether it made  
14 its own estimate or not.  
15 Q. Do you believe it was possible -- I  
16 think I've asked that.  
17 Did anyone ever tell Barclays that it  
18 was going to have a day-one liability of several  
19 billion dollars in order to satisfy the margin  
20 requirements at all of the exchange-traded  
21 derivative accounts that it was taking over?  
22 A. I don't know.  
23 Q. Would it have made sense to tell  
24 Barclays that?  
25 MR. DAKIS: Objection to form.

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MR. MAGUIRE: Objection to form.

A. I mean, is that a question?

Q. Do you believe Barclays -- do you believe Barclays was acquiring all of the margin deposit necessary to satisfy the margin requirements at all the exchange-traded derivative accounts?

A. To the extent there was margin deposit there, it was -- it was acquiring it for that purpose. We didn't understand that there was any real likelihood that there would be a substantial excess at the end of the day that Barclays would get and claim that it was able to keep on top of everything else in the agreement.

If Barclays had thought that at the time, it's something that should have been disclosed. If nobody thought it at the time, it seems to me it's in the nature of a mutual mistake and a kind of a windfall, but not -- nothing contemplated by the agreement.

Q. The agreement doesn't say anything about not getting an excess, does it?

MR. MAGUIRE: Does the agreement require --

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Q. Does any agreement in this deal say anything about Barclays not acquiring excess margin?

MR. MAGUIRE: When you say "agreement," you're referring to the written --

MR. HUME: Any. Any of them.

MR. MAGUIRE: Are you including the transcript of the sale hearing?

Q. Do you -- Mr. Kobak, do you believe the sale hearing is a contractual document?

A. I believe it goes to the interpretation of the agreement.

Q. Did you and your lawyers understand that the APA had an integration clause?

A. Yes.

Q. Do you understand that if something is going to be a contractual term in a written contract in a multi-billion dollar deal, it's actually supposed to be written in the contract?

MR. DAKIS: Objection to form.

Q. Was that understood at the time?

A. Well, I understand, you know, what the rules are. I understand there are exceptions to

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it. I'm also not sure that rule, the common law rule controls to what's said at a Bankruptcy Court when people are asking for approval of a deal that will insulate it against attack for all time.

Q. I just want to make sure I understand what the trustee's position is on excess margin. Is it excess over the day-one liability in the accounts or over the margin requirement imposed by the Custodial Clearing Corporation?

A. Well, the -- if you go to the final draft of the clarification letter, which you haven't shown me on this point, and go to the top of page 2, in the definition of "purchased assets" in paragraph 1(a), double I, capital C in parenthesis, the exchange-traded derivatives are described.

Added there for the first time, without I believe any prior notice to us, but in any event, is "any property that may be held to secure obligations under such derivatives," and in the context of what we understood, what was explained to us, what was explained to the court, at most that could be meant to say

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Barclays got what was necessary to secure the obligations to the extent there was a liability.

It didn't -- it doesn't say if there's excess cash in a clearing fund, that Barclays gets that. It doesn't say that if there are substantial margin excesses -- excess, Barclays gets that. So that's the way we see the agreement, and particularly in the context in which these were negotiated and approved by the court.

Again, if people thought there was likely to be a substantial excess which would change the value of the deal for everybody, there was no reason that couldn't have been described to people and there's no reason people couldn't have come back to court, if necessary, to explain the changes in the deal to the Court and the creditors as well as the parties.

Q. If the OCC had a margin requirement in excess of the amount of the liabilities, is Barclays allowed to keep the margin for that to meet the requirement, or does it have to give that back, too?

MR. MAGUIRE: Objection to form.

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Do you want to rephrase that question?

Q. I want to know what your position is. Is your position that if the margin requirement from the Clearing Corporation is in excess of the day-one liabilities, is it your view Barclays is or is not entitled to keep at least the amount of margin needed to satisfy the OCC's margin requirement?

MR. DAKIS: Objection to form.

MR. MAGUIRE: I have a difficulty with your asking this witness for a position. That's not his role. His role is to be here --

MR. HUME: He's been giving me his position all day.

A. I've been endeavoring to give you my understanding. If you trick me into answering some other way, I apologize. I read the language "any property that may be held to secure obligations under such derivatives," I'm not exactly clear what the word "held" means in that context, but it's my understanding of that would be there was property that would be held, it might be needed to satisfy the obligations

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and that was Barclays', and anything in excess of that is either ours or wasn't dealt with in this contract, but certainly was not a purchased asset.

(Exhibit 455, a document bearing Bates Nos. HHR\_00014574 through 14575, marked for identification, as of this date.)

Q. Mr. Kobak, Exhibit 455 is a letter that you sent to James McDaniel at Sidley Austin, representing the OCC, on November 14, 2008. You copy Ken Raisler, as counsel to Barclays Capital. Do you see that?

A. Yes.

Q. In that letter, and you respond to it a November 9 letter, which we probably have here, in which he asks for clarification of the treatment of all the margin deposit.

You say in the first paragraph you're aware of the Transfer and Assumption Agreement, which you executed?

A. Yes.

Q. You then say there are certain open issues and concerns surrounding the correlation between the deposited securities and the

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transfer of the options and futures positions they are intended to secure. Do you see that?

A. Yes.

Q. The second or second full paragraph, third paragraph of the letter, you state as follows: "Our position is that this collateral can be transferred to Barclays (and the trustee will gladly consent) if Barclays will live up to its bargain and assume the obligations involved for all customers, not just those in the so-called PIM accounts. We believe that this reflects both the letter and the intent of the Transfer and Assumption Agreement and certainly the trustee's understanding when I signed that agreement. However, this does not appear to be Barclays' understanding."

Let me stop there for a moment and ask you, is that still your position as stated here in this letter of November 14, 2008?

A. Well, what I'm really referring here to I think are the customer accounts, the customer OCC accounts, and yes, this is our position. We thought -- and it may be that we have satisfied ourselves by now that Barclays

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was living up to this. I'm not sure they did entirely, but if Barclays was satisfying the customer accounts, agreeing to assume the liabilities, it was appropriate that the collateral necessary to satisfy those obligations would be -- be transferred. Indeed, that would really be part, I would think, of the customer account transfer process.

Q. So you're confirming this is still your position as stated in this letter?

A. To the extent stated in this letter, yes.

Q. And in terms of the customers who are non-PIM customers --

A. Let me rephrase because you have tricked me again.

That's my understanding. My understanding of our position or what we think the agreements mean is as -- remains as stated in the November 14 letter with respect to the issues addressed in that letter.

Q. For the customers who had options positions with Lehman, does the trustee know how much margin in total those options customers had



| Page 310                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Page 311                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1 J. Kobak<br/>2 deposited with LBI?<br/>3 A. I don't know. I know that that is<br/>4 something, I believe, that Deloitte has looked<br/>5 into and I -- I know we've discussed it at<br/>6 times. I have no recollection of what the<br/>7 numbers are. I don't know if their work is<br/>8 completely complete in that regard, but I know<br/>9 that is something they have looked into.<br/>10 Q. Does the trustee understand that the<br/>11 margin that LBI deposited with the OCC is LBI<br/>12 property, not customer property?<br/>13 A. I think there's LBI property. I think<br/>14 also we believe that Barclays might be looking<br/>15 to its customers to satisfy obligations and then<br/>16 claiming a right to the property -- to the LBI<br/>17 property. That seemed inappropriate to us. I<br/>18 think that's one of the claims we have made<br/>19 against Barclays.<br/>20 Q. Is the trustee aware that for the<br/>21 positions in the options -- in the OCC customer<br/>22 account, Barclays is recording payables and<br/>23 receivables to those customers through a bridge<br/>24 account at LBI?<br/>25 A. I'm not -- Deloitte is probably aware</p>                       | <p>1 J. Kobak<br/>2 of that or maybe our administrative staff. I'm<br/>3 not really aware of the details.<br/>4 Q. Is the trustee aware that futures<br/>5 customers, as opposed to options customers, did<br/>6 transfer to Barclays?<br/>7 MR. MAGUIRE: You're saying futures<br/>8 customers as opposed to which customers?<br/>9 MR. HUME: Options customers.<br/>10 MR. MAGUIRE: So you're saying options<br/>11 customers did not transfer to Barclays?<br/>12 MR. HUME: I'm saying the question is<br/>13 focused on futures customers.<br/>14 A. Okay. I believe some futures<br/>15 customers at least transferred to Barclays.<br/>16 It's my understanding that sometimes those<br/>17 futures customers are also securities customers.<br/>18 Q. Let me ask the question this way: Are<br/>19 you aware that there are a large bulk of futures<br/>20 customers for whom Barclays has fronted<br/>21 collateral because the collateral those futures<br/>22 customers had deposited has not yet been<br/>23 transferred to Barclays?<br/>24 A. Yes, I realize that's happened in a<br/>25 number of cases, I believe.</p> |
| Page 312                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Page 313                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <p>1 J. Kobak<br/>2 Q. And do you contest Barclays' right to<br/>3 receive that collateral, segregated customer<br/>4 collateral for futures customers?<br/>5 A. No. I think we realize that's a<br/>6 problem really for both of us.<br/>7 Q. Because it's located in foreign<br/>8 jurisdictions with tied up in other LBI --<br/>9 Lehman administrations?<br/>10 A. For a variety of reasons, including<br/>11 depositories I think have refused to accept the,<br/>12 you know, jurisdiction of the U.S. court to deal<br/>13 with these things, we haven't been able to get<br/>14 our hands on it. I think we refer to that in<br/>15 the allocation motion, among other things.<br/>16 Q. Has the trustee or its staff or<br/>17 Deloitte, advisors of Deloitte, made any effort<br/>18 to value the positions at the OCC accounts as of<br/>19 the time Barclays took over those accounts?<br/>20 MR. DAKIS: Objection to form.<br/>21 A. I think Deloitte has made -- they have<br/>22 certainly made efforts to look at the<br/>23 collateral, whether there's any excess, and that<br/>24 may have involved some analysis of what the<br/>25 accounts are worth, what the liabilities would</p> | <p>1 J. Kobak<br/>2 be and so forth.<br/>3 Q. Let me ask you, if you could, to go<br/>4 back to the exhibit I showed you with the<br/>5 balance sheet that was sent on September 18 at<br/>6 the beginning of the deposition.<br/>7 A. Yes.<br/>8 Q. No, not that balance sheet. The one,<br/>9 the one that the trustee was sent from Weil<br/>10 Gotshal.<br/>11 MR. MAGUIRE: What's the number of<br/>12 that?<br/>13 A. This is 441? Yes, I have it.<br/>14 Q. And looking at the balance sheet, the<br/>15 assets being sold, for the derivatives line<br/>16 item, the assets being sold say derivatives on<br/>17 the asset side 3.6 and derivatives in the short<br/>18 inventory saying 1.7. Do you see that?<br/>19 A. Yes.<br/>20 Q. So there's almost \$2 billion of net<br/>21 value in the derivatives according to this<br/>22 provisional balance sheet on September 18,<br/>23 correct?<br/>24 A. As of September 17, supposedly.<br/>25 Q. This was sent to the trustee on the</p>                                                                                                                                  |

1 J. Kobak  
2 not given as a figure.

3 Q. By the time Barclays had made its  
4 decisions on which contracts to assume or not  
5 assume roughly 60 days after the closing, did  
6 the trustee at that point understand that the  
7 total cure amounts Barclays was going to be  
8 paying was substantially less than the \$1.5  
9 billion number?

10 A. I'm not sure if we ever -- if at that  
11 point we analyzed that number specifically. I  
12 do remember that it was quite a lot of contracts  
13 and quite a lot of court filings, as I recall,  
14 to indicate the contracts were assumed and cure  
15 amounts were paid or rejected.

16 Q. Was the trustee aware of the total  
17 cure amounts at the time that it filed its  
18 appellate brief defending the sale?

19 A. I don't know.

20 Q. Would it have caused the trustee not  
21 to support the sale on appeal if the trustee  
22 knew that there was only 230 million of cure  
23 amounts rather than 1.5 billion?

24 MR. MAGUIRE: Objection to form.

25 A. The position we took on appeal was, as

1 J. Kobak  
2 consider whether it might be necessary to go  
3 back to the court to get additional approval for  
4 what was in the clarification letter?

5 A. Not at the time because, again, we  
6 thought that changes that had been made were in  
7 the nature of substitutions to get to the kinds  
8 of economics that were talked about at the  
9 hearing. Subsequent times, and given some of  
10 the positions that Barclays started to take in  
11 late December and the fall -- spring of last  
12 year, we began to at least begin thinking about  
13 that. We clearly didn't want to go to court, if  
14 that were necessary, until we had explored  
15 sufficiently to feel that there was merit to  
16 anything we would bring to the court.

17 Q. I just have one more document to show  
18 you before -- I know you need to leave, we can  
19 talk about that in a second, but there's one  
20 more document I want to show you with one or two  
21 questions.

22 (Exhibit 456, a document bearing Bates  
23 Nos. HHR\_00009337 through 9342, marked for  
24 identification, as of this date.)

25 Q. Mr. Kobak, Exhibit 456 is an exchange

1 J. Kobak

2 I recall, and I did look at our briefs on this  
3 period, and without getting into privileges, did  
4 talk about the position that we wanted to take  
5 with the trustee, and we basically made two  
6 arguments:

7 One was that the equitable mootness  
8 doctrine applied because there hadn't been a  
9 request for a stay, which limited the grounds of  
10 attack; and, second, that we didn't think there  
11 was merit to the allegations that the entire  
12 procedure leading up to the sale hearing  
13 violated due process in terms of notice and  
14 opportunity to be heard given the exigent  
15 circumstances.

16 We didn't take a position on any other  
17 aspect, I don't believe, of the sale and didn't  
18 think it was necessary in connection with the  
19 specific types of arguments and allegations that  
20 were made by the party challenging the deal.

21 Q. So do you stand by the positions you  
22 took on appeal?

23 A. Yes.

24 Q. And after the clarification letter was  
25 finalized and executed, did the trustee ever

1 J. Kobak  
2 between you and your colleague Carolyn Lavine or  
3 Levine -- I'm not sure.

4 A. Levine.

5 Q. -- Levine and some other colleagues  
6 and the trustee and Laura Vecchio.

7 This follows a chain of e-mails  
8 relating to the transfer of OCC margin, and it  
9 attaches -- well, at least an earlier version in  
10 the chain attaches the Transfer and Assumption  
11 Agreement. I'll represent that to you.

12 A. Right.

13 Q. And I think Laura Vecchio sends it to  
14 Jim Giddens down below on October 17, saying,  
15 "Jim, this is what Alan Kaplan, the Barclays  
16 attorney, passed along regarding the OCC  
17 agreement." Do you see that?

18 A. Yes.

19 Q. And that's forwarded then to Carolyn  
20 Levine and you then -- and you then respond  
21 saying, "This is what we signed at the hearing  
22 because, rightly or wrongly, OCC told us nothing  
23 would move otherwise. Barclays had to  
24 substitute for LBI." You see that?

25 A. Yes.